TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JULY 20, 1925

(31,332)

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1925

[fol. 1] **IN COURT OF CLAIMS OF THE UNITED STATES**

Congressional, No. 17521

HARTSVILLE OIL MILL

vs.

UNITED STATES OF AMERICA, Defendant

I. PETITION—Filed June 13, 1923

To the Honorable the Chief Justice and the Judges of the Court of Claims:

Your petitioner, the Hartsville Oil Mill, respectfully states and represents as follows:

I

That on March 3, 1923, the Senate of the United States passed a resolution (Senate Resolution 148) providing that Senate Bill 4479 entitled "A bill for the relief of Rose City Cotton Oil Mill and others," pending in the Senate, should be referred to the Court of [fol. 2] Claims in pursuance of an act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911. A copy of said resolution is hereto attached as Exhibit 1. The Senate Bill 447 referred to in said resolution authorized and directed the Secretary of the Treasury to pay certain specific sums of money to various persons, firms, or corporations owning and operating cotton-seed oil mills producing linters and having contracts with the United States and which had been cancelled. Your petitioner is one of the corporations named in said bill, a copy of which is hereto attached as Exhibit 2.

II

That this petitioner is now, and was at all times hereinafter mentioned, a corporation organized and existing under the laws of the State of S. C., and is a citizen of said State, having its principal office for the transaction of business in the city of Hartsville, county of Darlington, and State of S. C.; that it has at all times borne true allegiance to the Government of the United States and is the sole owner of the claim herein presented, no part thereof having been assigned or transferred to any person, firm, or corporation.

III

That this petitioner is now and was at all times hereinafter stated engaged in the cotton-seed crushing industry, which involves the production of cotton linters, cotton-seed oil, cotton-seed meal, cot-

ton-seed hulls, and hull fiber. As a preliminary to the crushing of cotton seed for the production of oil, meal, and other products, it [fol. 3] is and was during the times hereinafter stated engaged in cutting off from the cotton seed the short fiber that adhered thereto after the removal of the staple cotton by the first ginning process. This short fiber is called "linters" or "cotton linters," and will hereafter be referred to as such.

That prior to May 2, 1918, it was the general custom in the entire cotton-seed crushing industry to cut an average of 75 pounds or less of such linters from each ton of seed, which linters were sold and used in stuffing mattresses, pads, horse collars, etc., and in making celluloid, felts, absorbent cotton, and other products, except that after the outbreak of the World War in 1914, some of the mills in the industry, finding that there was a market for linters of more than 75 pounds per ton of seed, produced such cut and sold it for munition purposes.

That prior to such date there was a ready demand and market for linters of the cut of 75 pounds or less to a ton of seed, and this petitioner was able to dispose of all linters of such type that it cut.

IV

That on or about the 6th day of April, 1917, the Congress of the United States of America, by a joint resolution thereof, declared that a state of war existed between "the United States and the Imperial German Government," and on or about the 7th day of December, 1917, the said Congress by joint resolution thereof declared that a state of war existed between "the United States of America and the Imperial and Royal Austro-Hungarian Government."

[fol. 4] V

That on or about March 4, 1918, the President of the United States, in the exercise of his war powers pursuant to various acts of Congress, reorganized the War Industries Board, with certain powers formerly exercised by the predecessor War Industries Board which had been created by the Council of National Defense on or about July 28, 1917, by virtue of an act of Congress passed on or about August 22, 1916 (39 Stat. L., 649, 9 Fed. Stat. Ann., 2nd Ed., p. 1342); that the powers and duties of said War Industries Board so reorganized by the President were stated in a communication addressed to Mr. Bernard M. Baruch on or about March 4, 1918, at which time the President tendered Mr. Baruch the chairmanship of said board, which communication is in words and figures as follows:

"The White House,
Washington, March 4, 1918.

My Dear Mr. Baruch: I am writing to ask if you will not accept appointment as chairman of the War Industries Board, and I am going to take the liberty at the same time of outlining the functions,

the constitution, and action of the board as I think they should be now established.

The functions of the board should be:

(1) The creation of new facilities and the disclosing, if necessary the opening up, of new or additional sources of supply.

(2) The conversion of existing facilities, where necessary, to new uses.

[fol. 5] (3) The studious conservation of resources and facilities by scientific, commercial, and industrial economies.

(4) Advice to the several purchasing agencies of the Government with regard to the prices to be paid.

(5) The determination, wherever necessary, of priorities of production and of delivery and of the proportions of any given article to be made immediately accessible to the several purchasing agencies when the supply of that article is insufficient, either temporarily or permanently.

(6) The making of purchases for the allies.

The board should be constituted as at present and should retain, as far as necessary and so far as consistent with the character and purposes of the reorganization, its present advisory agencies; but the ultimate decision of all questions except the determination of prices, should rest always with the chairman, the other members acting in a co-operative and advisory capacity. The further organization of advice I will indicate below.

In the determination of priorities of production, when it is not possible to have the full supply of any article that is needed produced at once, the chairman should be assisted and, so far as practicable, guided by the present priorities organization or its equivalent.

In the determination of priorities of delivery, when they must be determined, he should be assisted, when necessary, in addition to the present advisory priorities organization, by the advice and co-operation of a committee constituted for the purpose and consisting of official representatives of the Food Administration, the Fuel Administration, the Railway Administration, the Shipping Board, and the War Trade Board, in order that when a priority of delivery has [fol. 6] been determined there may be common consistent, and concerted action to carry it into effect.

In the determination of prices the chairman should be governed by the advice of a committee consisting, besides himself, of the members of the board immediately charged with the study of raw materials and of manufactured products, of the labor member of the board, of the chairman of the Federal Trade Commission, the chairman of the Tariff Commission, and the Fuel Administrator.

The chairman should be constantly and systematically informed of all contracts, purchases, and deliveries in order that he may always have before him schematized analysis of the progress of business in the several supply divisions of the Government in all departments.

The duties of the chairman are:

(1) To act for the joint and several benefits of all the supply departments of the Government.

(2) To let alone what is being successfully done and interfere as little as possible with the present normal processes of purchase and delivery in the several departments.

(3) To guide and assist wherever the need for guidance or assistance may be revealed; for example, in the allocation of contracts, in obtaining access to materials in any way preempted, or in the disclosure of sources of supply.

(4) To determine what is to be done when there is any competitive or other conflict of interest between departments in the matter of supplies; for example, when there is not a sufficient immediate supply for all and there must be a decision as to priority of need or delivery, or when there is competition for the same source of manufacture or supply, or when contracts have not been placed in [fol. 7] such a way as to get advantage of the full productive capacity of the country.

(5) To see that contracts and deliveries are followed up where such assistance as is indicated under (3) and (4) above has proved to be necessary.

(6) To anticipate the prospective needs of the several supply departments of the Government and their feasible adjustment to the industry of the country as far in advance as possible, in order that as definite an outlook and opportunity for planning as possible may be afforded the business men of the country.

In brief, he should act as the general eye of all supply departments in the field of industry.

Cordially and sincerely yours, Woodrow Wilson.

Mr. Bernard M. Baruch, Washington, D. C."

That the said Bernard M. Baruch accepted said appointment as Chairman of said War Industries Board and continued to perform the functions and duties set forth in said letter until said Board ceased to function and was disbanded.

VI

That on or about August 10, 1917, the Congress of the United States passed what is generally known as the Food and Fuel Control Act (Public Act No. 41, 65th Congress); that in pursuance of said act, which authorized the President to issue any regulations or orders necessary to carry out its provisions, the President did on or about August 10, 1917, issue an executive order or proclamation providing for the organization of the United States Food Administration, a copy of which executive order or proclamation is hereto

[fol. 8] attached as Exhibit 3 and made a part hereof; that in pursuance of said act and exercising the power therein given, the President issued various other executive orders or proclamations from time to time to bring under license control dealers in those commodities which he and the Food Administration deemed necessary to regulate, and proclaiming and declaring that dealers in certain foodstuffs specified must secure a license from the Food Administration before doing further business; that on or about October 8, 1917, the President in pursuance of said act issued an executive order or proclamation, licensing manufacturers, distributors and dealers in staple food commodities and requiring that said manufacturers, distributors, and dealers should secure a license in order to continue the transaction of said business; that the manufacturers, distributors, and dealers in cotton-seed and the products manufactured therefrom were required by said proclamation or executive order to secure said license, and that cotton-seed and the products manufactured therefrom were thereby brought under the license control of the Food Administration. A copy of said executive order or proclamation is hereto attached as Exhibit 4 and made a part hereof.

VII

That by virtue of said act of Congress and the said executive orders and proclamations, the said Food Administration prescribed the conditions under which manufacturers, distributors, and dealers of cotton-seed and the products manufactured therefrom might operate, and that by its power to grant or withdraw licenses at discretion the said Food Administration thereupon took control of [fol. 9] the cotton-seed industry of the entire country; that the said Food Administrator decided that the importance of oils of all sorts in the war program and the acute demand for cotton-seed cake made necessary some immediate action towards stabilization of prices, and accordingly by the presidential proclamation above referred to the ginners, crushers, refiners, and dealers in cotton-seed, cotton-seed oil, cotton-seed meal and cake were placed under license on November 1, 1917, and continued to operate their business thereafter under license until said regulation was rescinded; that in compliance with said act, executive orders, proclamations, and regulations, your petitioner was given a license as a manufacturer, producer, distributor, and dealer of cotton-seed and its products, which said license was No. G-12588, and continued to operate as a licensee under such license until said executive order, proclamation, and regulation were rescinded. The said license provided that the same should be revoked in the event of the failure of the licensee to comply with any of the provisions of the Food Control Act, or any of the orders, decisions, regulations of the United States Food Administration.

VIII

That after the American entrance into the war the requirements for munition purposes made a further increased demand for linters; that in the spring of 1918 it became apparent to the Government

of the United States in the then existing state of war that the munition needs of the Government and its allies and associates in the war were absolutely dependent upon increased production of mu- [fol. 10] nition linters during the crushing season beginning August 1, 1918, and ending July 31, 1919. Thereupon, on or about April 4, 1918, the War Industries Board formed a special division to deal with the subject, known as the "Cotton and Cotton Linter Section," with George R. James as its chief. The said Cotton Linter Section thereupon made an investigation of the cotton-linter situation, and after a survey of the entire field found that the prospective production would be inadequate to meet the demands of the war program. The said Cotton Linter Section reported that the average annual production of linters in the five years preceding 1918 was less than one-half the prospective requirements for the year ending July 31, 1919, and reached the conclusion that it was not only necessary to increase the production of cotton linters but to limit the production to linters of munition type.

IX

By virtue of the act creating the Council of National Defense and by virtue of the action of the Council of National Defense creating the War Industries Board and by virtue of the act of the President reorganizing said Board, the said War Industries Board thereupon took control and thereafter throughout its existence continued to regulate all industry in its direct and indirect relation to the war and to the nation. It thereupon organized various sub-boards and sections for the purpose of performing its functions, and especially for procuring an adequate flow of materials for the two great war-waging agencies of the Government, to wit, the War and Navy Departments. It promulgated various rules and regulations controlling [fol. 11] supplies necessary to the military needs of the Government and its allies and associates in the war. It passed rules and regulations designed to stimulate and expand production in those industries making war essentials and to regulate, through various plans and devices, preference lists, priorities, and other methods, all industries furnishing war needs. Among the industries so regulated was that engaged in crushing cotton-seed.

X

The President of the United States at the time of the reorganization of said War Industries Board appointed a price-fixing committee, made up of a chairman, a representative of the War Department a representative of the Navy Department, a representative of the Fuel Administration, a representative of the Tariff Commission, a representative of the Federal Trade Commission, the labor representative of the War Industries Board, and the chairman of the War Industries Board, ex officio. The said price-fixing committee was organized on or about March 14, 1918, and thereafter, under the President's authority, assumed direct responsibility to the President and

made its reports to him. Said committee advised upon the prices of basic materials, as to general price policies, and fixed prices subject to the approval of the President.

XI

That the manufacturers, distributors and dealers in cotton linters were thereafter under the control, authority and direction of the said [fol. 12] War Industries Board and the said price-fixing committee until said Board and committee ceased to function.

XII

That on or about April 12, 1918, the said Cotton Linter Section of the War Industries Board called a meeting of the representatives of the cotton-seed-crushing industry with representatives of the War and Navy Departments for the purpose of dealing with the acute situation which had been found to exist with reference to the production of cotton linters. Said meeting was held at Washington D. C., on or about the 1st day of May, 1918, and was attended by officials of the War Industries Board, officials of the United States Ordnance Department, and by persons representing the cotton-seed crushers.

XIII

That at said meeting the cotton-seed crushers were advised of the war necessities of the Government, its Allies and Associates, and they were also advised that the War Industries Board had decided that all cotton linters must thereafter be cut of the munition type, and that all such linters must be sold to the United States through the Dupont American Industries, Inc., and to no other person, firm or corporation. They were also advised that the United States would purchase all munition linters which the producers then had on hand, and all that were to be produced thereafter during the remainder of the 1917-1918 season; and that the United States would purchase all munition linters produced during the season beginning August [fol. 13] 1, 1918, and ending July 31, 1919; and that the price which would be paid for such linters would be $.0467 per pound.

That since September, 1915, the price of linters had been at all times more than $.05 per pound, and at the close of the year 1916 the average price was $.068 per pound, and on May 1, ~~1917~~ 1918, the price was considerably higher.

The crushers who attended said meeting, upon being advised of the action taken by the officials of the United States, as above set out, agreed for themselves to the conditions so imposed, and further agreed to report said action to the industry and recommend its acceptance.

XIV

That on or about May 2, 1918, the War Industries Board notified this petitioner, as well as the other cotton-seed crushers, of its action in words and figures, as follows:

"The price-fixing committee of the War Industries Board has this day determined upon a price of $4.67 per hundred pounds f. o. b. points of production on all cotton linters now in the hands of the producers (cotton-seed-oil mills), dealers in linters, warehousemen, or others than those manufacturing explosives or explosive materials, and also to apply for the linters to be produced during the next season, August 1, 1918 to July 31, 1919."

And also formulated and issued from time to time certain rules governing the manufacture of cotton linters, a copy of which rules is hereto attached as Exhibit 5 and made a part hereof.

[fol. 14] That after receiving the notification of the War Industries Board, relying upon the representation of the said officials of the United States, and believing that the United States would take all munition linters produced subsequent to May 2, 1918, up to and including July 31, 1919, the cotton oil mills began the rehabilitation of their plants, installed new machinery and equipment for the production of linters of munition type, and made provisions for storing and handling the same.

XV

That said petitioner subsequent to said May 2, 1918, cut all cotton linters of munition type, which it sold only through the Du Pont American Industries, Inc., which acted as the purchasing agent of the Procurement Division of the United States Ordnance Department, and said petitioner fully performed all obligations on its part to be performed with respect to said agreement of May 1, 1918, until ordered to cease and desist therefrom by the United States, acting through its agents, as more particularly hereinafter set forth.

XVI

That on or about May 20, 1918, Congress passed what is known as the Overman Act, being an act authorizing the President to coordinate and consolidate various executive bureaus, agencies, and offices. (Fed. Stat. Ann., 1918, Supp. 170.)

XVII

That in pursuance of said act and by virtue thereof, the President on or about May 28, 1918, issued an executive order or proclamation [fol. 15] establishing the War Industries Board as a separate administrative agency, which proclamation is in words and figures as follows:

"I hereby establish the War Industries Board as a separate administrative agency to act for me and under my direction; this is the board which was originally formed by and subsidiary to, the Council of National Defense under the provisions of an act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes, approved August 29, 1916.

"The functions, duties, and powers of the War Industries Board, as outlined in my letter of March 4, 1918, to Bernard M. Baruch, Esquire, its chairman, shall be and hereby are continued in full force and effect.

(Signed) Woodrow Wilson."

XVIII

That on or about August 1, 1918, for the purpose of carrying into effect the foregoing plans of the United States, a cotton linter pool was formed, for the purpose of taking all linters in the hands of the crushers as at May 1, 1918, and for the further purpose of purchasing, inspecting, and distributing all cotton linters to be produced during the entire crushing season, beginning August 1, 1918, and ending July 31, 1919.

The Ordnance Department, through which the other agencies of the Government, including the Navy, were to receive their supply of cotton linters, and the various departments or boards of the other governments who were allies and associates of the United States in [fol. 16] the war, were members of the pool. As a part of the plan for the organization of the pool, the Du Pont American Industries, Inc., was appointed sole purchasing agent for the Ordnance Department, and a set of rules was formulated and adopted for the operation of the pool covering the detailed arrangement by which the participating members were to secure their supplies at uniform prices, including freight charges. In order that there should be no duplication of effort, the respective functions of the Ordnance Department and the Cotton Linter Section, with respect to the pool, were defined. Through the instrumentality of the pool, the cotton linters of the country were turned directly to war use, and the cotton-seed crushers were called upon, were compelled to, and did, obey the directions and instructions of the Ordnance Department and the Cotton Linter Section with respect to the production of linters, their allocation, storage, shipments, and all other requirements imposed by such authorities.

XIX

That subsequent to May 1, 1918, and after the formation of the cotton linter pool, the United States Ordnance Department and the Du Pont American Industries, Inc., concluded to put into a written agreement the outstanding informal agreement and contract under which the Du Pont American Industries, Inc., was then acting as the exclusive purchasing agent for the cotton linter pool, and thereafter, on or about the 28th day of August, 1918, such written contract was made, whereby the Du Pont American Industries, Inc., was appointed the sole agent of the United States Ordnance Depart- [fol. 17] ment to purchase all the cotton linters produced in the United States between the first day of August, 1918, and the first day of August, 1919, with full power to make contracts for such purchases either in the name of the Government or in its own corporate

name as agent for the Government; that by the terms of said agreement the said agent was directed to pay the price of $4.67 per hundred pounds, which had been fixed by the price fixing committee heretofore referred to and which price had become effective on May 2, 1918. A copy of said contract is hereto atached as Exhibit 6 and made a part hereof.

XX

That on or about the 2nd day of September, 1918, Du Pont American Industries, Inc., acting as a Government agent and exercising the powers and duties conferred upon it by the contract hereinabove last referred to, sent to this petitioner and to all other producers engaged in the cotton-seed crushing industry a printed form of contract, with directions to this petitioner to execute the same; that by the terms of said printed contract so sent to this petitioner the United States of America, acting by Du Pont American Industries, Inc., agreed to purchase from this petitioner 4,560 bales of cotton linters, being approximately 2,250,000 pounds, at a price of 4.67 cents per pound, being the price fixed by the War Industries Board May 2, 1918. The said contract contained provisions as to the kind of material purchased, as to inspection, shipping instructions, etc., and was identical with other contracts sent at the same time to all other cotton-seed crushers, excepting as to the amount of [fol. 18] linters, place of delivery, time of shipment, etc.; that the quantity of linters stated in said contract was estimated to be all the cotton linters which would be produced by the petitioner during the crushing season beginning August 1, 1918, and ending July 31, 1919, and that the amounts stated under the caption, "time of shipment," were the amounts which were to be shipped during monthly periods extending over the entire crushing season. A copy of said contract is hereto attached as Exhibit 7 and made a part hereof.

XXI

That when the said printed form of contract was presented to the Cotton Seed Crushers' Association for signature, objection was made to it on the ground that it contained a cancellation clause, providing that it could be cancelled upon the "termination of the present war." But this petitioner, however, signed the contract with the cancellation clause therein, relying upon the agreement of the Government of the United States to take the entire output of cotton linters for the season 1918-1919, which was embodied in the printed agreement. After the signing of said printed agreement, this petitioner continued to produce cotton linters under the terms of said agreement; and this petitioner faithfully performed all the obligations in the said agreement on its part to be performed and as therein provided, and continued to cut linters as directed by the War Industries Board and the Ordnance Department and to follow the rules and directions of the Ordnance Department and the Cotton Linter Section of the War Industries Board until ordered to cease and desist as hereinafter more fully set forth.

[fol. 19] XXII

That this petitioner and all other cotton-seed crushers during the period during which they were performing said contract operated under licenses from the said Food Administration and were compelled to conduct their operations according to the rules and provisions of said Food Administration; that on or about July 1, 1918, the said Food Administration put into effect a system or scheme known as the stabilized scheme of prices for cotton-seed and its products, and fixed a price which the cotton-seed crushers were to pay for cotton-seed at $70.00 per ton based on a production of 41 gallons of crude cotton-seed oil to be produced from each ton of seed crusher; that in fixing or adopting said scheme the said Food Administration divided the cotton-producing territory into zones and determined the yields and prices that should be effective for the seed-crushing season of 1918-1919.

That this petitioner and the other cotton-seed crushers were compelled to pay the prices therein set forth as a condition of remaining in business and keeping their licenses; that the Food Administration on or about September 7, 1918, promulgated an order or regulation addressed to all the crushers of cotton-seed and the purchasers of products thereof, further fixing the selling price of the products derived by crushing and establising a stabilized price scale for the purchase and sale of cotton-seed and its products, and fixing the spread and profit which the cotton-seed crushers were to receive. A copy of said order and regulation, which is known as Circular No. 49, is hereto attached as Exhibit 8 and made a part hereof. [fol. 20] The schedule of prices, therefore, so adopted and fixed by the United States through its war agencies and affecting the purchase of cotton-seed and the crushing of the same and the disposition of the products thereof for every ton of seed crushed during the season 1918-19, is as follows:

Crusher to pay farmer		$70.00
Freight		2.00
Cost of crushing operation (Spread)		15.50
Profit		3.00
Sale price of oil	$53.80	
Sale price of meal	26.38	
Sale price of hulls	3.55	
Sale price of linters (to be bought by Government)	6.77	
	$90.50	$90.50

This petitioner, therefore, and all others engaged in the cotton-seed crushing industry continued to perform their agreement with the United States, while at the same time they were compelled to purchase the cotton-seed and sell the products thereof at the prices fixed by the United States through its various agencies. Although the price of all materials and labor had greatly increased, due to

war activities, this petitioner was allowed, in said schedule and under the regulations of the Food Administration and the War Industries Board, a limited operating cost within the limits fixed by the rules and regulations above referred to irrespective of the actual cost, and under said rules it was allowed a gross profit upon a ton of cotton-seed from all the products combined of only $3.00 per ton of seed crushed.

[fol. 21]

XXIII

That the United States thereupon, through its various agencies above set forth and various representatives located in different States and through special emissaries, sent to the cotton-producing territory, by letters, advertisements, speeches, and other propaganda, urged the cotton producers throughout the entire country to make unusual efforts to produce a large amount of cotton during the season 1918-19, assuring them that a stabilized price had been fixed by the Government of the United States and that the farmers and others would receive $70.00 per ton based on the oil content of the seed produced, and the cotton-seed crushers in the entire industry, relying upon their agreements with the United States and relying upon the stabilization scheme which had been fixed, made commitments in their various localities, and obligated themselves to take all the seed that would be produced during said season at said fixed price of $70.00 per ton. Because of the agreements made by the United States with the cotton-seed crushers and because of the stabilization scheme, cotton-seed became a staple commodity, upon which loans could be secured from the banks, and many banking institutions, throughout the cotton-producing territory, relying upon the good faith of the Government, the stabilization scheme and the specific agreement of the United States, made with the cotton-seed crushers, loaned large sums of money in order to encourage a maximum production of cotton. Mercantile and manufacturing industries likewise extended large credits based upon the good faith of such agreements and war program. Manufacturing, mercantile, and banking institu-

[fol. 22]

tions loaned large sums of money and extended large credits to the cotton-seed oil mills, upon being shown the agreements with the United States and evidence of the possession of great quantities of such commodity, which had been made staple by the actions of the Government.

XXIV

That pursuant to said agreement which this petitioner had with the Government of the United States through the agencies above set forth, and acting upon the orders of the various departments of the Government above referred to, this petitioner continued to crush seed and to produce linter therefrom as in said contract provided and in full compliance with the instructions of said governmental departments and in compliance with the said agreements and understandings above set forth, paying for the cotton-seed at the rate of $70.00 per ton as fixed by the rules and provisions of the Food Ad-

ministration and selling the products therefrom at the rates also fixed by the rules of the departments, and in good faith made commitments for the entire crushing season, having equipped their mills to take care of the entire requirements of the Government, and continued to fully perform all the obligations on its part to be performed during the whole period from August 1, 1918, to July 31, 1919, inclusive, except as they were precluded from so doing by the orders, instructions, and requirements of the United States.

XXV

That on or about the 11th day of November, 1918, an armistice [fol. 23] was duly signed between the United States and its Allies, on the one hand, and the Imperial German Government and its Allies, on the other hand, whereby hostilities were suspended. Said armistice was a truce between the nations at war, and was not a "termination of the present war," but was an agreement for suspending military operations by mutual agreement of the belligerents pending negotiations for the purpose of concluding a treaty of peace. The war still continued for several months after the signing of said armistice, during which time the armed forces of the United States were in enemy territory, military operations were continued and the signing of said armistice in nowise prevented the resumption of hostilities between the belligerents in case a treaty of peace was not agreed upon.

XXVI

That on or about the 28th day of November, 1918, the War Industries Board, acting in conjunction with and for the benefit of the Ordnance Department, notified all engaged in the cotton-seed crushing industry, including this petitioner, to change their cut of linters to the commercial grade; that said War Industries Board delivered a letter to Louis N. Geldert, Secretary of the War Service Committee of the Interstate Cotton-seed Crushers Association, who was acting as the Washington representative of this petitioner and all other cotton-seed crushers, which said letter is in words and figures as follows:

"Your are requested to notify all of your cotton-seed oil mills to discontinue the cutting of munition linters and to reduce the cut to 75 pounds or less at the earliest possible moment. When reduction [fol. 24] in cut is begun an accurate record of seed crushed and linters produced should be made and preserved pending definite and final arrangement for the discharging of all obligations of the Government linter pool to the mills and the removal of all rules and restrictions now in force. This request is made to avoid as much as possible an obvious economic waste, and is at the suggestion of officials of the Ordnance Department. It is hoped that a prompt and definite plan for the settlement can be offered in a few days.

(Signed) George R. James, Chief Cotton and Cotton Linters Section."

Thereupon, the said Louis N. Geldert immediately notified this petitioner and all other mills engaged in the cotton-seed crushing industry, of the direction so given by the War Industries Board.

XXVII

That subsequent to the mills receiving notification as above set forth, the crushers organized a committee to deal with the situation, which committee was known as the Linter Committee and will hereafter be referred to as such; that said Committee, being in doubt as to what "definite and final arrangements for discharging all obligations of the Government" were to be made, and what changes were to be made in the rules and restrictions governing said industry then in force, went to the City of Washington, and had numerous conferences with the War Industries Board, the Ordnance Department, and the Food Administration with reference to the situation. In the numerous discussions and negotiations held between the [fol. 25] Linter Committee and the officials of the Ordnance Department, the Government officials took the position that there was "a termination of the present war." Various propositions were submitted by the officials of the Government to the Linter Committee and by the Linter Committee to the officials of the United States. On or about the 10th day of December, 1918, the said Linter Committee submitted a final proposition for the United States discharging all obligations under its agreement with the cotton-seed crushers upon the basis of the Government agreeing to take all linters produced to December 21, 1918, at the fixed price of $4.67 per hundredweight f. o. b. mills point of production, the mills to change their linter production not later than said date to types known as mattress linters, which were to be sold at a price to be fixed by the War Industries Board, and to produce to the mills $6.77 per ton of seed crushed, (which was the amount guaranteed the mills for their linter output for the entire season by the War Industries Board and the amount figured in the seed prices paid and to be paid the farmers under the Food Administration's plan of stabilization,) and providing that the Government linter pool should be obligated to buy at the end of the season, July 31, 1919, all stocks of linters in the hands of the original producers according to the agreed-upon grades and at prices that would compensate the mills for any loss below the fixed $6.77 per ton of seed. A copy of said proposition is hereto attached as Exhibit 9. Said proposition was approved by Mr. George R. James, the chief of the Cotton Linter Section of the War Industries Board, as being eminently fair, and after a conference of the committee representing the producers with Mr. Bernard M. Baruch, the chairman of the Board, he likewise gave the proposition his full endorsement. The propo- [fol. 26] sition was then submitted to the officials of the Food Administration, who likewise gave it their sanction and approval. The proposition thus became the joint recommendation of the mills, the War Industries Board, the Food Administration, and as such was submitted to the Ordnance Department. Attached hereto as

Exhibit 10 and made a part hereof is a copy of the letter of approval transmitted by the War Industries Board to the Ordnance Department, which rejected such proposal.

XXVIII

That on or about the 21st day of December, 1918, the War Industries Board ceased to function and was disbanded. A few days prior thereto, the Linter Committee had been notified that the War Industries Board would no longer function after said date and that all negotiations for the settlement of the obligations of the Government must in the future be carried on with the United States Ordnance Department. Other negotiations and conferences were undertaken by and between the Linter Committee and the officials of the Ordnance Department, with the final result that on or about the 30th day of December, 1918, the Linter Committee, together with numerous others interested in the cotton-seed-crushing industry, assembled at Washington. On said date the Ordnance Department made a final proposition, to the effect that the United States would take all munition linters which had been cut prior to December 31, 1918, and then in the hands of the crushers, at the price stated in the printed agreement, which would net the crushers $6.77 per ton of seed crushed; that the cotton-seed crushers after January 1, 1919, would cut no munition linters and would [fol. 27] cut only commercial linters which they were permitted to sell to other purchasers; that the United States would take from the crushers whatever linters remained on hand and unsold on July 31, 1919, provided the total quantity did not exceed 150,000 bales, at prices estimated to net the crushers $6.77 per ton of seed crushed. The said Linter Committee was on said date about 5:30 o'clock in the afternoon advised that they would be given until 7:00 o'clock that evening to state whether or not they would accept said proposition, and that in case they declined to execute a modified contract in accordance with said proposition notices of cancellation would be wired the mills by the Ordnance Department at 7:00 p. m. sharp on said day. They were also advised that unless they accepted said proposition the Ordnance Department would decline to accept from any of the crushers any linters whatever, including those linters then on hand which had been inspected and tagged by the United States.

XXIX

That at the time said proposition was made the agreement between the United States and this petitioner and other cotton-seed crushers was in full force and effect; that the threatened action of the officials of the Ordnance Department to cancel said contract would have resulted in the collapse of the stabilization scheme and the financial failure and bankruptcy of many of the cotton-seed crushers and of banks which had advanced loans to them, and in widespread loss to seed buyers, refiners, farmers, merchants, and others associated with the cotton-seed industry; that the entire business fabric of the South

[fol. 28] would have been affected; that the action of said officials induced the cotton-seed crushers and the committee representing them to believe and fear that said stabilization and scheme of prices would fail, resulting in said loss. And that the Food Administration advised the crushers that if they failed to pay $70.00 per ton for seed, as fixed by the said Food Administration, that the Food Administration would no longer maintain the stabilized scale of prices for the sale of the products of the crushers, great quantities of which the crushers had on hand manufactured out of seed for which they had paid $70.00 per ton, thus producing a great financial loss and embarrassment that no prudent business man could stand; that said cotton-seed crushers, including this petitioner, had made commitments to farmers, seed buyers, merchants and others, whereby they were to purchase the entire crop of cotton-seed for the season of 1918-1919 at the said rate of $70.00 basis per ton of seed; that they could not pay said price or carry out their obligations if the price of oil, meal and hulls was stricken down, and that they could not continue to operate if said stabilization scheme was discontinued; that said cotton-seed crushers had represented to the farmers that the farmers would receive $70.00 basis for each and every ton of seed produced during the season of 1918-19 no matter whether it was brought to the market early or late, and had, in reliance upon their agreement with the Government and in order to avoid economic waste, which would result in the seed piling up in the hands of the crushers sooner than they could crush it, asked the farmers to hold back the seed until the mills could handle it; that to have refused to pay the farmer the stabilized price of seed would have [fol. 29] meant a violation of their obligation to the farmer and the breaking of promises made during the war emergency at the request of the Government to have the farmers increase production. Said crushers were dependent upon the good will of the farmers of their sections to continue in business; that said cotton-seed crushers were unable to pay said price to the farmers for the balance of the season and absorb the loss in case of the cancellation of said contract; that the officials of the Ordnance Department in threatening to exercise such arbitrary power led this petitioner and other cotton-seed crushers to believe that their business was in imminent danger of loss and destruction; that at the time said threat was made the cotton-seed crushers had on hand linters which had been cut in compliance with the orders of the Government, amounting to about 270,000 bales and in value worth between six and seven million dollars; that much of it had been inspected and tagged by the Government; that the threatened refusal of the Government to take even such linters induced the fear of ruination and bankruptcy; that at said time the cotton-seed crushers had about 1,000,000 tons of seed on hand which had not been crushed, and that there were in the hands of the farmers about 480,000 tons of seed; that cotton-seed crushing is a seasonal business and the seed will rot and the oil content will be reduced if the seed is not crushed within a reasonable time after it is ginned, all of which facts were duly known to the officials of the Ordnance Department; that the said Cotton Linter Committee and the other

representatives of the cotton-seed crushing industry, as well as bankers, merchants and others who were present in Washington at the time, believed that the threat of those clothed with official authority, [fol. 30] if exerted, would destroy and damage the business of the cotton-seed crushers and would result in a financial crash, which would have disrupted the entire business fabric of many of the States of the South; that a refusal of the mills to pay the farmers the stabilized price would have been a breaking of faith with the entire business community upon which the good will of the mills' business life depended; that even those mills which were able temporarily to finance the loss could not have done so without shouldering a burden too hazardous for any prudent man to undertake; that the action of the officials of the Government constituted legal duress and that the parties were not on equal terms; that the representatives of this petitioner and others, after a hurried conference, therefore notified the Ordnance Department that said proposition was accepted. This was done, however, under protest and for the sole reason that no alternative was offered.

XXX

That on the same day, to-wit: December 30, 1918, the said Ordnance Department notified this petitioner and the other cotton-seed crushers by telegram that the contract which this petitioner had for the sale of linters to the United States was cancelled. A copy of said telegram is in words and figures as follows:

"Washington, D. C., December 30, 1918. Your contract for linters with Du Pont American Industries, Agent for United States Ordnance Department, is cancelled. Your committee has tentatively agreed upon a form of settlement contract. Reply Major Hawkins, Contract Section, Procurement Division."

[fol. 31] That on or about January 2, 1919, the said Ordnance Department issued instructions to the Du Pont American Industries, Inc., with reference to the modified contract, containing, among other things, the following:

"If any producer declines to execute such instrument, the Ordnance Department will authorize you to decline to accept from such producer any linters whatever, and the United States will reimburse you for any proper expenditures and costs incurred or resulting by reason of such action on your part."

XXXI

That a copy of said letter of January 2, 1919, together with a printed form of a modified contract was thereupon sent to this petitioner and the other cotton-seed crushers, all of whom were familiar with the negotiations which had been conducted and all of whom understood that there was no alternative except to execute the same;

that this petitioner under the circumstances hereinabove set forth did execute said modified contract, a copy of which is hereto attached as Exhibit 11 and made a part hereof; that said modified contract was signed under legal duress and solely because of the threat made by the officials of the United States, all as more fully above set forth; that there was no consideration whatever passing from the United States to this petitioner for said modified contract; that the United States neither paid any money nor parted with any other consideration whatever to this petitioner and undertook no obligation greater than it already had under the original printed contract; that it has not paid to this petitioner any sums which petitioner was not entitled [fol. 32] to receive under the original agreement; that this petitioner received no benefit whatever from said modified contract to which it was not entitled under the original agreement; that the United States assumed no liability under the modified contract additional to what it had under the original agreement.

XXXII

That this petitioner has fully performed all the obligations on its part to be performed under the understanding had with the United States on May 1, 1918, and also under the printed agreement entered into on or about September, 1918, except as it has been obstructed and prevented from so doing by the United States; that it has at all times taken every precautionary and needful step to minimize losses which would accrue and which were occasioned by the default of the United States; that the United States has, however, failed, neglected, and refused to perform the obligations on its part to be performed under said agreements, but that while the United States has taken and paid for all the linters which this petitioner produced during the year 1918, it has failed, neglected, and refused to make payments for linters produced from the seed crushed during the period from January 1, 1919, to August 1, 1919. That the United States has further failed to pay to this petitioner or to any one for or on its behalf the storage charges upon linters produced during said period from January 1, 1919, to August 1, 1919, as it had agreed to do under said written agreement; that the United States has failed, neglected, and refused to pay to this petitioner or to any one for or on its behalf the insurance charges upon linters produced during [fol. 33] said period from January 1, 1919, to August 1, 1919, as in said agreement provided; that the United States because of its failure to take from this petitioner the linters produced by it for the period beginning January 1, 1919, to August 1, 1919, made it necessary for this petitioner in order to preserve said linters and to minimize the loss occasioned by said default of the Government, to rebale, recondition, and handle said linters from time to time, all of which charges and payments made by this petitioner were occasioned by the failure, refusal, and neglect of the United States to carry out its contracts; that under the terms of said understanding and agreement between the United States and this petitioner all of the linters produced during the entire period of the crushing season, including the period from January 1, 1919, to August 1, 1919, was to be sold to the Gov-

ernment f. o. b. mills point of production, and this petitioner was to assume no part of the selling cost, the United States having agreed to pay to the Du Pont American Industries, Inc., a commission for purchasing said linters for the United States; that this petitioner in order to minimize the loss occasioned by the failure, neglect, and refusal of the Government to carry out its contract sold to others than the Government certain of said linters after the United States had refused to take the same, and that this petitioner should receive from the United States the selling cost of such linters so sold.

Petitioner further says, under the terms of the said agreements by and between the United States and this petitioner, that the linters produced during the entire period of the crushing season, including the period from January 1, 1919, to August 1, 1919, the United [fol. 34] States was to purchase said linters f. o. b. mills points of production, and that the freight charges on the same were to be equalized among the allocatees, and that this petitioner was not to bear or assume any of said charges, but that because of the failure, neglect, and refusal of the Government to faithfully perform its contract and because petitioner was compelled to sell certain of said linters to others during said period from January 1, 1919, to August 1, 1919, petitioner was compelled to pay the freight charges on said linters so sold, and said freight charges should be borne and paid by the United States and this petitioner given reimbursement for the same.

Petitioner further states that it has received from the United States certain sums of money for linters produced during the period January 1, 1919, to August 1, 1919, being all the linters which the said United States consented to take, and that it has also received certain moneys for linters produced by it during the period from January 1, 1919, to August 1, 1919, and which it sold to others, at the best market price, than the United States Government in order to minimize the losses.

XXXIII

Petitioner, therefore, submits the following as its claim against the defendant, the United States of America:

For seed crushed during the priod Jan. 1, 1919, to August 1, 1919, 10,180 tons at $6.77 per ton	$68,918.60
" storage charges upon linters produced during said period	1,955.50
" insurance charges upon linters produced during said period	None.
" reconditioning charges upon linters produced during said period	None.
[fol. 35]	
For selling cost of linters produced during said period and sold to others than the United States	None.
" handling charges of linters produced during said period and sold to others than the United States	None.
" freight charges on linters produced during said period and sold to others than the United States	None.
	$70,874.10

Amount received from United States for linters produced during the period from January 1, 1919, to August 1, 1919	$62,193.80	
" received for linters produced and sold to others than the United States	757.35	
		62,951.15
Total balance claimed by petitioner		$7,922.95

XXXIV

Your petitioner further says that there are no claims liquidated or unliquidated of any kind or description existing in favor of the United States against your petitioner, which the said United States can set-off or counter-claim against this petitioner, and that by reason of the foregoing facts your petitioner is entitled to receive from the United States the total sum of $7,922.95.

Wherefore, your petitioner has filed this its petition in this honorable court in order that it may make an investigation of all the facts relating to petitioner's claim against the United States, and prays this honorable court that it may take such action as is proper under the provisions of the Act of March 3, 1911, known as the Judicial Code, and that it proceed in accordance with the provisions of section [fol. 36] 151 of said act and report to the Senate of the United States in accordance therewith.

Your petitioner further prays that this honorable court find that this petitioner might have presented its claim or brought its action under existing law and prosecuted the same to judgment, irrespective of the reference of the same to this court by the Senate, and that this court may find that this petitioner has so presented its claim, and that it may further find that the United States is indebted to this petitioner in the sum of $7,922.95, and that the same may be decreed to be a judgment against the United States in favor of this petitioner.

Huntsville Oil Mill, by J. J. Lawton, Pres.

Duly sworn to by J. J. Lawton. Jurat omitted in printing.

[fol. 37] EXHIBIT 1 TO PETITION

67th Congress, 4th Session

S. Res. 448

In the Senate of the United States

February 24, 1923.—Mr. Robinson, from the Committee on Claims, reported the following resolution; which was placed on the calendar.

March 3, 1923.—Considered and agreed to.

Resolution

Resolved, That the bill (S. 4479) entitled "A bill for the relief of Rose City Cotton Oil Mill and others," now pending in the Senate, together with all the accompanying papers, be, and the same is hereby, referred to the Court of Claims, in pursuance of the provisions of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911; and the said court shall proceed with the same in accordance with the provisions of such Act and report to the Senate in accordance therewith.

[fol. 38]

Exhibit 2 to Petition

67th Congress, 4th Session

S. 4479

In the Senate of the United States

February 5, 1923.—Mr. Robinson introduced the following bill; which was read twice and referred to the Committee on Claims.

March 3, 1923.—Ordered printed, showing amendments agreed to.

A Bill

For the Relief of Rose City Cotton Oil Mill and Others

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the following persons, firms, or corporations owning and operating cottonseed oil mills producing linters which entered into contracts with the United States of America, through the agency of the United States Ordnance Department, which contracts were canceled by said Ordnance Department, the several sums set opposite their names, to wit:

[fol. 39]

Rose City Cotton Oil Mill, Little Rock, Arkansas, $24,477.39.

Little Rock Cotton Oil Mill, Little Rock, Arkansas, $15,542.75.

Home Oil and Manufacturing Company, Augusta, Arkansas, $5,244.92.

El Dorado Oil Mill and Fertilizer Company, El Dorado, Arkansas, $10,170.19.

Forest City Cotton Oil Mill, Forest City, Arkansas, $18,471.80.

New South Oil Mill, Helena, Arkansas, $15,502.06.

United Oil Mills, Hope, Arkansas, $37,621.14.

Roberts Cotton Oil Mill, Jonesboro, Arkansas, $34,310.19.

Columbia Cotton Oil Company, Magnolia, Arkansas, $14,682.25.

Marianna Cotton Oil Company, Marianna, Arkansas, $38,277.33.

Pine Bluff Cotton Oil Mill, Pine Bluff, Arkansas, $25,269.58.
Searcy Cotton Oil Mill, Searcy, Arkansas, $22,642.23.
Phœnix Cotton Oil Company, Walnut Ridge, Arkansas, $14,538.09.
Warren Cotton Oil and Manufacturing Company, Warren, Arkansas, $12,582.64.

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Wilmot Oil Mill, Wilmot, Arkansas, $9,554.87.
Attalla Oil and Fertilizer Company, Attalla, Alabama, $11,521.18.
Farmers and Ginners Cotton Oil Company, Birmingham, Alabama, $32,958.09.
Magic City Cotton Oil Company, Birmingham, Alabama, $7,413.15.
Boaz Cotton Oil Company, Boaz, Alabama, $10,075.40.
Dadeville Oil and Gin Company, Dadeville, Alabama, $4,298.95.
Home Oil Mill, Decatur, Alabama, $27,444.95.
Eufaula Cotton Oil Company, Eufaula, Alabama, $5,293.57.
Huntsville Warehouse Company, Huntsville, Alabama, $483.58.
Clay County Oil Mill and Fertilizer Company, Lineville, Alabama, $4,363.86.
Dixie Cotton Oil Company, Montgomery, Alabama, $5,162.70.
National Cotton Oil Company, Montgomery, Alabama, $13,074.62.
Alabama Oil and Guano Company, Opelika, Alabama, $8,594.95.
Mutual Cotton Oil Company, Ozark, Alabama, $7,688.61.

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Roanoke Oil Company, Roanoke, Alabama, $11,082.50.
Sulligent Cotton Oil Company, Sulligent, Alabama, $5,106.07.
Planters Chemical and Oil Company, Talladega, Alabama, $14,450.04.
Tuscaloosa Cotton Seed Oil Company, Tuscaloosa, Alabama, $14,150.41.
Macon County Oil Company, Tuskagee, Alabama, $2,970.22.
Farmers Cotton Oil Trading Company, Uniontown, Alabama, $9,329.10.
Wedowee Oil Mill, Wedowee, Alabama, $2,019.10.
Globe Cotton Oil Mills, Los Angeles, California, $17,189.86.
Planters Oil Company, Albany, Georgia, $49,195.50.
Americus Oil Company, Americus, Georgia, $19,098.86.
Farmers Cotton Oil Company, Americus, Georgia, $17,717.05.
Ashburn Oil Mill, Ashburn, Georgia, $12,222.10.
Hodgson Oil Refining Company, Athens, Georgia, $22,440.77.
Empire Cotton Oil Company, Atlanta, Georgia, $142,787.20.

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Swift and Company, Oil Mill, Atlanta, Georgia, $36,307.05.
International Vegetable Oil Company, Augusta, Georgia, $47,858.96.
Planters Cotton Oil Company, Augusta, Georgia, $41,362.05.

Swift and Company, Oil Mill, Augusta, Georgia, $30,900.44.
Bowden Oil and Fertilizer Company, Bowden, Georgia, $2,774.29.
Mandeville Mills, Bremen, Georgia, $10,728.08.
Calhoun Oil and Fertilizer Company, Calhoun, Georgia, $3,404.59.
Mandeville Mills, Carrollton, Georgia, $17,507.12.
Home Mixture Guano Company, Columbus, Georgia, $13,761.42.
Farmers Oil Mill, Commerce, Georgia, $8,718.50.
Patrick Oil Company, Conyers, Georgia, $6,757.52.
Covington Cotton Oil Company, Covington, Georgia, $24,142.03.
Hodgson Oil Refining Company, Crawford, Georgia, $3,337.64.
Marion Harper Cotton Oil Company, East Point, Georgia, $52,225.50.

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Elberton Oil Mills, Elberton, Georgia, $16,656.27.
Hodgson Oil Refining Company, Farmington, Georgia, $3,806.61.
Grantville Oil Mill, Grantville, Georgia, $7,485.57.
Greenville Cotton Oil and Manufacturing Company, Greenville, Georgia, $8,148.46.
Griffin Oil Company, Griffin, Georgia, $30,069.
Walker Brothers Company, Griffin, Georgia, $14,744.51.
Hartwell Oil Mill, Hartwell, Georgia, $3,427.26.
Hazelhurst Cotton Oil Mill, Hazelhurst, Georgia, $21,184.50.
Farmers Cotton Oil Company, La Grange, Georgia, $10,711.95.
Abbott Manufacturing Company, Louisville, Georgia, $1,478.14.
Central Oil Company, Macon, Georgia, $19,461.65.
Maysville Oil Mill, Maysville, Georgia, $1,868.95.
Milledgeville Oil Mills, Milledgeville, Georgia, $16,222.16.
Monroe Oil and Fertilizer Company, Monroe, Georgia, $10,589.18.
Coweta Oil Mill, Newnan, Georgia, $4,885.74.
Ocilla Oil and Fertilizer Company, Ocilla, Georgia, $8,098.33.

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The Richland Cotton Oil Company, Richland, Georgia, $3,632.52.
Lookout Oil and Refining Company, Rome, Georgia, $15,847.20.
Farmers Oil Mill, Royston, Georgia, $9,823.79.
Rutledge Oil Company, Rutledge, Georgia, $2,931.44.
International Vegetable Oil Company, Savannah, Georgia, $57,440.69.
Washington Cotton Oil Company, Tennille, Georgia, $33,211.38.
Upson County Oil Mill, Thomaston, Georgia, $7,679.61.
McDuffie Oil and Fertilizer Company, Thomson, Georgia, $6,128.65.
Vidalia Cotton Oil Mill Company, Vidalia, Georgia, $6,710.41.
Villa Rica Cotton Oil Company, Villa Rica, Georgia, $4,405.90.
Pope Manufacturing Company, Washington, Georgia, $6,315.82.
Winder Oil Mill, Winder, Georgia, $5,036.39.

McNair-Young Company, Wrens, Georgia, $10,615.84.
Roberts Cotton Oil Company, Cairo, Illinois, $12,891.51.

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East St. Louis Cotton Oil Company, National Stock Yards, Illinois, $89,106.93.
Cotton Seed Products Company, Louisville, Kentucky, $33,563.28.
Alexandria Cotton Oil Company, Alexandria, Louisiana, $55,543.35.
Red River Oil Company, Alexandria, Louisiana, $30,234.20.
Arcadia Cotton Oil Mills and Manufacturing Company, Arcadia, Louisiana, $1,552.10.
Peoples Cotton Oil Company, Lafayette, Louisiana, $3,915.48.
Desota Cotton Oil Company, Mansfield, Louisiana, $2,939.14.
Natchitoches Cotton Oil Company, Natchitoches, Louisiana, $1,756.67.
Ruston Oil Mills and Fertilizer Company, Ruston, Louisiana, $6,060.46.
Caddo Cotton Oil Company, Shreveport, Louisiana, $4,183.59.
Henderson Cotton Oil Company, Shreveport, Louisiana, $56,762.82.
Tallulah Cotton Oil Company, Tallulah, Louisiana, $39,299.20.

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Vidalia Oil and Ice Company, Vidalia, Louisiana, $21,540.07.
Grenada Oil Mill, Belzoni, Mississippi, $16,967.52.
Brookhaven Cotton Oil and Fertilizer Company, Brookhaven, Mississippi, $12,068.58.
Planters Manufacturing Company, Clarksdale, Mississippi, $54,145.86.
Coldwater Cotton Oil Company, Coldwater, Mississippi, $10,620.84.
Corinth Oil Mill, Corinth, Mississippi, $11,506.16.
Grenada Oil Mill, Crenshaw, Mississippi, $13,067.76.
Friars Point Oil Mill and Manufacturing Compnay, Friars Point, Mississippi, $7,299.20.
Glen Allen Oil Mill, Glen Allen, Mississippi, $18,662.45.
Delta Cotton Oil Company, Gowdy, Mississippi, $18,221.16.
Grenada Oil Mill, Grenada, Mississippi, $7,765.92.
Delta Cotton Oil Company, Greenville, Mississippi, $25,672.72.
Planters' Oil Mill and Manufacturing Company, Greenwood, Mississippi, $32,505.94.
Meridian Fertilizer Factory, Hattiesburg, Mississippi, $15,848.83.
Hazlehurst Oil Mill and Fertilizer Company, Hazlehurst, Mississippi, $25,326.99.

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Hollandale Cotton Oil Mill, Hollandale, Mississippi, $21,776.12.
Indianola Cotton Oil Company, Indianola, Mississippi, $20,712.26.
Central Cotton Oil Company, Jackson, Mississippi, $10,352.26.
Planters Oil and Gin Company, Kosciusko, Mississippi, $28,808.24.
Laurel Oil and Fertilizer Company, Laurel, Mississippi, $10,625.91.
Imperial Cotton Oil Company, Macon, Mississippi, $7,236.58.
Eagle Cotton Oil Company, Meridian, Mississippi, $17,101.51.
Natchez Oil Mill, Natchez, Mississippi, $6,556.09.
Newton Oil Mill, Newton, Mississippi, $18,903.32.
Pontotoc Cotton Oil Company, Pontotoc, Mississippi, $9,353.67.
Bolivar Cotton Oil Company, Shelby, Mississippi, $9,939.01.
Starksville Cotton Oil Company, Starksville, Mississippi, $9,087.79.
Webb-Sumner Oil Mill, Sumner, Mississippi, $39,220.20.

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Planters Oil Mill, Tunica, Mississippi, $10,937.53.
Tupelo Oil and Ice Company, Tupelo, Mississippi, $5,313.71.
Refuge Cotton Oil Company, Vicksburg, Mississippi, $15,519.19.
Winona Oil and Manufacturing Company, Winona, Mississippi, $17,374.33.
Planters Cotton Oil Company, Yazoo City, Mississippi, $12,991.45.
American Cotton Oil Company, New York, New York, $795,888.25.
Industrial Cotton Oil Properties, New York, New York, $8,525.85.
Southern Cotton Oil Company, New York, New York, $706,907.51.
Bertie County Cotton Oil Company, Aulander, North Carolina, $11,658.91.
Battleboro Oil Company, Battleboro, North Carolina, $10,091.47.
Elba Manufacturing Company, Charlotte, North Carolina, $9,265.53.
Chowan Cotton Oil and Fertilizer Company, Edenton, North Carolina, $21,559.26.
Eastern Cotton Oil Company, Elizabeth City, North Carolina, $12,457.71.

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Farmville Oil and Fertilizer Company, Farmville, North Carolina, $29,824.34.
Fremont Oil Mill Company, Fremont, North Carolina, $16,433.98.
Eastern Cotton Oil Company, Hertford, North Carolina, $16,701.11.

Kings Mountain Cotton Oil Company, Kings Mountain, North Carolina, $4,192.12.

Robeson Manufacturing Company, Lumberton, North Carolina, $8,756.50.

Elba Manufacturing Company, Maxton, North Carolina, $7,348.40.

Mooresboro Cotton Oil Company, Mooresboro, North Carolina, $2,881.77.

New Bern Cotton Oil and Fertilizer Company, New Bern, North Carolina, $45,070.84.

Stanley Cotton Oil Company, Norwood, North Carolina, $425.25.

Hoke Oil and Fertilizer Company, Raeford, North Carolina, $20,161.43.

International Vegetable Oil Company, Raleigh, North Carolina, $22,691.06.

Rowland Oil and Fertilizer Company, Rowland, North Carolina, $9,155.64.

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Lee County Cotton Oil Company, Sanford, North Carolina, $21,899.42.

Cotton Oil and Ginning Company, Scotland Neck, North Carolina, $11,650.35.

Winterville Cotton Oil Company, Winterville, North Carolina, $12,402.17.

Buckeye Cotton Oil Company, Cincinnati, Ohio, $648,118.41.

Ardmore Oil and Milling Company, Ardmore, Oklahoma, $5,858.03.

Chickasha Cotton Oil Company, Chickasha, Oklahoma, $65,442.23.

Commonwealth Cotton Oil Company, Cushing, Oklahoma, $4,617.56.

Durant Cotton Oil Mill, Durant, Oklahoma, $7,278.06.

Elk City Cotton Oil Company, Elk City, Oklahoma, $3,918.11.

Farmers Cotton Oil Company, Madill, Oklahoma, $5,367.24.

Mangum Cotton Oil Company, Mangum, Oklahoma, $10,696.70.

Osage Cotton Oil Company, Muskogee, Oklahoma, $115,421.34.

Osage Cotton Oil Company, Muskogee, Oklahoma, $1,089.81.

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Southwestern Cotton Oil Company, Oklahoma City, Oklahoma, $6,190.39.

Union Cotton Oil Company, Prague, Oklahoma, $5,889.86.

Purcell Cotton Seed Oil Mill Company, Purcell, Oklahoma, $6,567.29.

H. Hughes, lessee, Roff, Oklahoma, $746.49.

Tecumseh Oil and Cotton Company, Tecumseh, Oklahoma, $13,617.94.

Anderson Phosphate and Oil Company, Anderson, South Caroline, $20,550.15.

The Cotton Oil Company, Bamburg, South Carolina, $10,231.68.
Palmetto Oil Company, Bishopville, South Carolina, $28,635.33.
Campbello Oil Mill, Campbello, South Carolina, $11,177.07.
Cheraw Oil and Fertilizer Company, Cheraw, South Carolina, $31,932.21.
Chesnee Oil Mill, Chesnee, South Carolina, $3,437.31.
Swift and Company Oil Mill, Columbia, South Carolina, $42,-165.23.
Cowpens Cotton Oil Company, Cowpens, South Carolina, $6,-980.60.

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Denmark Oil Mill, Denmark, South Carolina, $9,318.55.
Fountain Inn Oil Mill Company, Fountain Inn, South Carolina, $21,387.
Victor Cotton Oil Company, Gaffney, South Carolina, $10,163.55.
Hartsville Oil Mill, Hartsville, South Carolina, $7,922.95.
Kershaw Oil Mill, Kershaw, South Carolina, $23,272.
Lancaster Cotton Oil Company, Lancaster, South Carolina, $16,-112.16.
Leesville Oil Mill, Leesville, South Carolina, $21,655.41.
Liberty Oil Mill, Liberty, South Carolina, $3,688.94.
Manning Oil Mill, Manning, South Carolina, $18,616.49.
Marion Cotton Oil Company, Marion, South Carolina, $13,776.41.
Farmers Oil Mill, Newberry, South Carolina, $10,547.54.
Ninety-six Oil Mill, Ninety-six, South Carolina, $19,698.43.
Orangeburg Fertilizer Company, Fort Motte, South Carolina, $6,-637.60.

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Pendleton Oil Mill, Pendleton, South Carolina, $1,617.65.
Ridge Springs Oil Mill, Ridge Springs, South Carolina, $4,170.32.
Dorchester Cotton Oil Company, Saint George, South Carolina, $8,755.53.
Caldwell and Company, Spartanburg, South Carolina, $18,984.48.
Timmonsville Oil Company, Timmonsville, South Carolina, $7,-092.79.
Ware Shoals Oil Mill, Ware Shoals, South Carolina, $7,525.22.
Tyger-Shoals Milling Company, Wellford, South Carolina, $6,770.
Westminster Oil and Fertilizer Company, Westminster, South Carolina, $9,706.34.
Woodruff Oil and Fertilizer Company, Woodruff, South Carolina, $10,307.79.
Yorkville Cotton Oil Company, York, South Carolina, $6,141.94.
Lookout Oil and Refining Company, Alton Park, Chattanooga, Tennessee, $16,237.44.
Lake County Manufacturing Company, Dyersburg, Tennessee, $20,346.01.

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Phœnix Cotton Oil Company, Dyersburg, Tennessee, $21,160.80.
Central Oil Mills, Jackson, Tennessee, $19,558.16.
Phœnix Cotton Oil Company, Box 1106, Memphis, Tennessee, $23,364.18.
Shelby County Cotton Oil Company, Memphis, Tennessee, $29,843.11.
Valley Cotton Oil Company, Memphis, Tennessee, $21,946.52.
Ripley Oil Mills, Ripley, Tennessee, $6,319.13.
Continental Cotton Oil Company, Abilene, Texas, $15,733.18.
Alice Cotton Oil Company, Alice, Texas, $11,554.29.
Alvarado Cotton Oil Mill, Alvarado, Texas, $12,555.92.
Athens Cotton Oil Company, Athens, Texas, $5,340.25.
Ballinger Cotton Oil Company, Ballinger, Texas, $3,954.04.
Planters Cotton Oil Company, Box 305, Bonham, Texas, $8,992.71.
Bryan Cotton Oil and Fertilizer Company, Bryan, Texas, $9,805.72.
Gibson Gin and Oil Company, Calvert, Texas, $7,148.97.

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Cameron Cotton Oil Company, Cameron, Texas, $13,772.50.
Corpus Christi Cotton Oil Company, Corpus Christi, Texas, $2,272.40.
Houston County Oil Mill and Manufacturing Company, Crockett, Texas, $9,833.27.
Dallas Oil and Refining Company, Dallas, Texas, $7,643.53.
International Vegetable Oil Mills, Dallas, Texas, $7,950.84.
Dawson Oil Mill, Dawson, Texas, $1,625.96.
El Campo Cotton Oil Company, El Campo, Texas, $3,578.34.
Producers Cotton Products Association, Ennis, Texas, $6,549.97.
Farmers Cotton Oil Company, Farmersville, Texas, $5,334.78.
Flatonia Oil Mill, Flatonia, Texas, $455.02.
Forney Cotton Oil and Ginning Company, Forney, Texas, $12,160.21.
Fort Worth Cotton Oil Mill, Fort Worth, Texas, $14,664.53.
Gatesville Cotton Oil Mill, Gatesville, Texas, $4,034.21.
Gilmer Cotton Seed Oil Company, Gilmer, Texas, $886.59.

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Gonzales Cotton Oil and Manufacturing Company, Gonzales Texas, $11,239.16.
Grand View Cotton Oil Company, Grand View, Texas, $1,842.61
Hamlin Cotton Oil Company, Hamlin, Texas, $8,042.40.
Lavaca Oil Company, Hallettsville, Texas, $4,933.40.
Planters Oil Company, Hearne, Texas, $23,037.78.
Hempstead Oil Mill, Hempstead, Texas, $3,000.13.
Buncini Cotton Oil Mills, Houston, Texas, $4,826.94.

Houston Cotton Oil Mills, Houston, Texas, $14,591.50.
International Vegetable Oil Mills, Houston, Texas, $12,256.24.
Magnolia Provision Company, Houston, Texas, $28,467.85.
South Texas Cotton Oil Company, Houston, Texas, $8,000.89.
Jacksboro Oil and Milling Company, Jacksboro, Texas, $718.06.
Jacksonville Cotton Oil Company, Jacksonville, Texas, $7,813.90.
Jefferson Oil Company, Jefferson, Texas, $1,384.55.
Kaufman Cotton Oil Company, Kaufman, Texas, $7,899.03.

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Kenedy Cotton Oil Company, Kenedy, Texas, $15,496.
Leonard Oil Mill Company, Leonard, Texas, $6,684.91.
Longview Cotton Oil Company, Longview, Texas, $12,028.86.
Lyons Oil Mill Company, Lyons, Texas, $2,877.25.
Price Oil Mill Company, Madisonville, Texas, $5,483.62.
Marshall Cotton Oil Company, Marshall, Texas, $2,175.13.
Memphis Cotton Oil Company, Memphis, Texas, $12,788.97
Munger Oil and Cotton Company, Mexia, Texas, $2,376.81.
Midlothian Oil and Gin Company, Midlothian, Texas, $1,862.62.
Mineola Cotton Oil Company, Mineola, Texas, $5,723.09.
Planters Cotton Oil Company, Navasota, Texas, $15,115.81.
The Schumacher Oil Works, Navasota, Texas, $15,242.89.
Bowie County Cotton Oil Company, New Boston, Texas, $2,837.43.
Landa Cotton Oil Company, New Braunfels, Texas, $12,808.34.

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Palestine Oil and Manufacturing Company, Palestine, Texas, $8,305.26.
Pilot Point Cotton Oil Mill Company, Pilot Point, Texas, $1,984.64.
Quanah Cotton Oil Company, Quanah, Texas, $30,436.56.
Alamo Oil and Refining Company, San Antonio, Texas, $18,563.06.
San Marcos Oil Mill, San Marcos, Texas, $6,097.99.
Schulenberg Oil Mill, Schulenberg, Texas, $1,119.84.
Sherman Oil Mill, Sherman, Texas, $5,707.71.
Shiner Oil Mill and Manufacturing Company, Shiner, Texas, $8,476.04.
Sweetwater Cotton Oil Company, Sweetwater, Texas $1,401.56.
Taft Oil Company, Taft, Texas, $9,342.60.
Planters Cotton Oil Company, Taylor, Texas, $10,170.53.
Munger Cotton Oil Company, Teague, Texas, $831.73.
Temple Cotton Oil Mill, Temple, Texas, $5,191.30.
Terrell Oil and Refining Company, Terrell, Texas, $9,748.80.
Farmers Oil and Fertilizer Company, Texarkana, Texas, $1,277.88

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Thorndale Oil Mill, Thorndale, Texas, $4,162.34.
Tyler Cotton Oil Company, Tyler, Texas, $11,871.55.

Victoria Manufacturing Company, Victoria, Texas, $9,917.51.
Brazos Valley Cotton Oil Company, Waco, Texas, $964.49.
Waco Cotton Oil Mill, Drawer 29, Waco, Texas, $24,769.85.
Weimer Oil Works, Weimer, Texas, $6,632.83.
Whitesboro Cotton Oil Company, Whitesboro, Texas, $14,681.02.
Winters Cotton Oil Company, Winters, Texas, $6,810.73.
Hunt County Oil Company, Wolfe City, Texas, $7,992.53.
Munger Oil and Cotton Company, Wortham, Texas, $1,364.63.
Yorktown Oil and Manufacturing Company, Yorktown, Texas, $7,991.41.
Crescent Cotton Oil Company, Memphis, Tennessee, $91,610.61.
Washington Cotton Oil Company, Dallas, Texas, $26,278.36.
Atlanta Cotton Oil Company, $26,705.03.
Monroe County Cotton Oil Company, Aberdeen, Mississippi, $13,255.40.

[fol. 60] EXHIBIT 3 TO PETITION

Executive Order by the President Providing for Organization of United States Food Administration

Whereas under and by virtue of an act of Congress entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, it was provided among other things, as follows:

"That, by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel, including fuel oil and natural gas, fertilizer, and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feed, and fuel, hereafter in this act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement, and to establish and maintain governmental control of such necessaries during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred, and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act;"

[fol. 61] And whereas it is further provided in said act as follows:

"That, in carrying out the purpose of this act the President is authorized to enter into any voluntary arrangement or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person. * * *;"

Now, therefore, under and by virtue of the power conferred upon me by the provision of said act and for the purpose of carrying the same into effect, I, Woodrow Wilson, President of the United States, hereby order and direct as follows:

There is hereby established a governmental organization to be known as and called United States Food Administration.

Said organization shall consist of an officer designated as United States Food Administrator and such subordinate assistants and employees as may be selected by him for service in the city of Washington, D. C., and elsewhere, with the consent and approval of the President and under such rules and regulations as may from time to time be prescribed.

Herbert Hoover is hereby appointed United States Food Administrator, such appointment to take effect from this date.

Said United States Food Administrator shall hold office during the pleasure of the President.

Said United States Food Administrator shall supervise, direct, and carry into effect the provision of said act, and the powers and authority therein given to the President so far as the same apply to foods, feeds, and their derivative products and to any and all practices, procedure, and regulations authorized or required under the provision of said act, including the issuance, regulation, and [fol. 62] revocation, in the name of said Food Administrator, of licenses under said act, and in this behalf he shall do and perform such acts and things as may be authorized or required of him from time to time by direction of the President and under such rules and regulations as may be prescribed by the President from time to time.

He shall also have the authority to make use of the services of legal counsel and employ and fix the compensation of such counsel as may from time to time be deemed by him necessary for the purpose of aiding him in carrying this act into effect.

And whereas the President is further authorized in carrying out the purposes of said act "to utilize any department or agency of the Government and to co-ordinate their activities so as to avoid preventable loss or duplication of effort or funds," all departments and established agencies of the Government are hereby directed to cooperate with the United States Food Administrator in the performance of his duties as hereinbefore set forth and to give said administrator such support and assistance as may be requisite or expedient to enable him to perform his said duties and avoid duplication of effort and expenditure of funds.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this 10th day of August, in the year of our Lord one thousand nine hundred and seventeen, and of the independence of the United States of America, the one hundred and forty-second.

Woodrow Wilson.

By the President: Robert Lansing, Secretary of State. (Seal.)

[fol. 63] EXHIBIT 4 TO PETITION

By the President of the United States of America.

A Proclamation

Whereas, Under and by virtue of an Act of Congress entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved by the President on the 10th day of August, 1917, it is provided among other things as follows:

"That, by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to assure an adequate supply and equitable distribution, and to facilitate the movement of foods, feeds, fuel including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this Act called necessaries; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war. For such purposes the instrumentalities, means, methods, powers, authorities, duties, obligations, and prohibitions hereinafter set forth are created, established, conferred and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act."

[fol. 64] And, Whereas, It is further provided in said Act as follows:

"That, from time to time, whenever the President shall find it essential to license the importation, manufacture, storage, mining or distribution, of any necessaries, in order to carry into effect any of the purposes, of this Act, and shall publicly so announce, no person shall, after a date fixed in the announcement, engage in or carry on any such business specified in the announcement of importation, manufacture, storage, mining, or distribution of any necessaries as set forth in such announcement, unless he shall secure and hold a license issued pursuant to this section. The President is authorized to issue such licenses and to prescribe regulations for the issuance of licenses and requirements for systems of accounts and auditing of accounts to be kept by licenses, submission of reports by them, with or without oath or affirmation, and the entry and inspection by the President's duly authorized agents of the places of business of licenses."

And, Whereas, It is essential, in order to carry into effect the provisions of the said Act, that the powers conferred upon the President by said Act be at this time exercised, to the extent hereinafter set forth.

Now, Therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers conferred upon me by said Act of Congress, hereby find and determine and by this proclamation do announce that it is essential, in order to carry into effect the purposes of said Act, to license the importation, manufacturing, storage and distribution of necessaries, to the extent hereinafter specified.

All persons, firms, corporations and associations engaged in the business either of (1) operating cold storage warehouses (a cold storage warehouse, for the purposes of this proclamation, being de-
[fol. 65] fined as any place artificially or mechanically cooled to or below a temperature of 45 degrees above zero Fahrenheit, in which food products are placed and held for thirty days or more), (2) operating elevators, warehouses or other places for the storage of corn, oats, barley, beans, rice, cottonseed, cottonseed cake, cottonseed meal or peanut meal, or (3) important, manufacturing (including milling, mixing or packing,) or distribution (including buying and selling) any of the following commodities:

Wheat, wheat flour, rye or rye flour,
Barley or barley flour,
Oats, oatmeal or rolled oats,
Corn, corn grits, cornmeal, hominy, corn flour, starch from corn, corn oil, corn syrup or glucose,
Rice, rice flour,
Dried beans,
Pea seed or dried peas,
Cotton seed, cottonseed oil, cottonseed cake or cottonseed meal,
Peanut oil or peanut meal,
Soya bean oil, soya bean meal, palm oil or copra oil,
Oleomargarine, lard, lard substitutes, oleo oil or cooking fats,
Milk, butter or cheese,
Condensed, evaporated or powdered milk,
Fresh, canned or cured beef, pork or mutton,
Poultry or eggs,
Fresh or frozen fish,
Fresh fruits or vegetables,
Canned: Peas, dried beans, tomatoes, corn, salmon or sardines,
Dried: Prunes, apples, peaches or raisins,
Sugar, syrups or molasses,

Excepting, however,

[fol. 66] (1) Operators of elevators or warehouses handling wheat or rye, and manufacturers of the derivative products of wheat or rye, who have already been licensed,

(2) Importers, manufacturers and refiners of sugar, and manufacturers of sugar syrups and molasses, who have already been licensed,

(3) Retailers whose gross sales of food commodities do not exceed $100,000.00 per annum,

(4) Common carriers,

(5) Farmers, gardeners, co-operative associations of farmers or gardeners, including live stock farmers, and other persons with respect to the products of any farm, garden or other land owned, leased or cultivated by them.

(6) Fishermen who- business does not extend beyond primary consignment,

(7) Those dealing in any of the above commodities on any exchange, board of trade or similar institution as defined by Section 13 of the Act of August 10th, 1917, to the extent of their dealings on such exchange or board of trade,

(8) Millers of corn, oats, barley, wheat, rye or rice operating only plants of a daily capacity of less than seventy-five barrels,

(9) Canners of peas, dried beans, corn, tomatoes, salmon or sardines whose gross production does not exceed 5,000 cases per annum,

(10) Persons slaughtering, packing and distributing fresh, canned or cured beef, pork or mutton, whose gross sales of such commodities do not exceed $100,000.00 per annum.

(11) Operators of poultry or egg packing plants, whose gross sales do not exceed $50,000.00 per annum,

(12) Manufacturers of maple syrup, maple sugar and maple compounds,

(13) Ginners, buyers, agents, dealers or other handlers of cotton seed who handle yearly, between September 1st and August 31st, less [fol. 67] than one hundred and fifty tons of cotton seed,

Are hereby required to secure on or before November 1, 1917, license, which license will be issued under such rules and regulations governing the conduct of the business as may be prescribed.

Application for license must be made to the United States Food Administration, Washington, D. C., Law Department—License Division, on forms prepared by it for that purpose, which may be secured on request.

Any person, firm, corporation or association other than those hereinbefore excepted, who shall engage in or carry on any business hereinbefore specified after November 1, 1917, without first securing such license, will be liable to the penalty prescribed by said Act of Congress.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia, this Eighth day of October, in the year of our Lord One Thousand Nine Hundred and Seventeen, and of the Independence of the United States of America, the One Hundred and Forty-second.

Woodrow Wilson.

By the President: Robert Lansing, Secretary of State. (Seal.)

[fol. 68]

EXHIBIT 5 TO PETITION

Rules Governing Cotton Linters

War Industries Board

Cotton and Cotton Products Section

Effective July 10, 1918

Rule 1. All Linters cut after May 2, 1918, to be of munition type, running 145 pounds and upwards per ton of cotton seed crushed. They may be offered and sold only through the Du Pont American Industries Co., acting purchasing agents for the Procurement Division of the United States Ordnance Department.

Rule 2. Linters shall be procured by one reginning of cotton seed. Such linters must be reasonably free of motes, flues, hull linters, hull fiber, hull particles, sweepings, seed, meats, lubricating oil, excess moisture and all foreign matter, and the price of $4.67 per hundred pounds, fixed by the War Industries Board, as of May 2, 1918, shall apply thereto.

Rule 3. Linters contaminated by any of the above-mentioned foreign materials, or linters made from spoiled, burned or badly damaged seed, or which have been otherwise damaged, will be accepted by the Government's authorized buying agency at a reduced price. If the producer and the buying agency cannot agree upon a price, an agreed sample approved by both the producer and the buying agency may be submitted to the Procurement Division of the United States Ordnance Department for a decision as to price. Such decision shall be final.

Rule 4. The making of two cuts of linters or passing the seed through linting machines a second time is prohibited.

[fol. 69] Rule 5. Motes, Flues and Sweepings: All motes, flues and sweepings must be offered for sale to the Government buying agency, and if of acceptable grade will be purchased. If not acceptable, mills may then apply to the Cotton and Cotton Products Section of the War Industries Board for permit to sell on the open market such rejected motes, flues and sweepings in limitel specified quantities.

Rule 6. All offerings of motes, flues and sweepings must be in not less than carload lots.

Rule 7. All raw cellulose produced by oil mills, whether linters, motes, flues, sweepings, hull fiber or other fibrous by-product of the cotton seed, shall be offered for sale to the Government buying agency.

Rule 8. The average weight of bales on any one shipment shall not be less than 450 pounds, nor more than 550 pounds. Tare shall not exceed 7 per cent. For contract purposes, it shall require 500 pounds gross weight to constitute one bale. All bales must be covered sufficiently and properly to protect the contents.

Rule 9. Beginning August 1, 1918, all manufacturers of cotton linters will be required to furnish semi-monthly reports as of the last working day prior to the first and fifteenth of each month; these reports to be mailed within three days after the end of each semi-monthly period. Reports will deal with raw material and finished linters along the lines laid down in the reports required by the United States Food Administration.

These rules harmonize with army specifications.

Geo. R. James, Chief, Cotton and Cotton Products Section, War Industries Board.

[fol. 70] EXHIBIT 6 TO PETITION

Agreement

This agreement made this twenty-eighth (28th) day of August 1918, between Du Pont American Industries, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "the Agent"), party of the first part, and United States of America (hereinafter called "the Government"), by Chas. N. Black, Lt. Colonel, Ordnance Department, National Army (hereinafter called the "Contracting Officer"), acting under the authority of the Chief of Ordnance, United States Army, and under the direction of the Secretary of War, party of the second part, Witnesseth:

Whereas, a state of war exists between the United States of America and the German and Austro-Hungarian Governments, constituting a National Emergency, and the usual requirements of advertising for bids are therefore dispensed with; and

Whereas, in order to conserve the present and future supply of cotton linters, it became necessary for the Government to provide for the regulation thereof; and

Whereas, the Government, through the War Industries Board, has established a price of $0.0467 per pound for cotton linters, and has assumed control of the entire production and distribution thereof in order to facilitate the manufacture of explosives for the proper conduct of the war; and

Whereas, the Government deems it advisable to employ a single efficient purchasing and selling agent, which will take sole charge of the entire matter, including the financing, as provided herein, the buying inspecting, grading and where necessary, the storing of all cotton linters produced in the United States between the first day of August, [fol. 71] 1918, and the first day of August, 1919, and which will distribute said linters by sale to such individuals, firms, corporations and Governments at such times and in such amounts as the War Industries Board shall direct; and

Whereas, the Agent represents that it possesses an organization and personal experience in the business of buying, selling and otherwise dealing in cotton linters, and is willing to act as the Government's agent in the performance of the services hereinafter more particularly set forth, upon the terms and for the compensation stated herein.

Now, therefore, in consideration of the mutual agreements herein contained, the parties hereto have agreed, and by these presents do agree with each other as follows:

Article I

Definitions.—Whenever the word "Agent" is used herein it shall be taken to mean the party of the first part, and its legal representatives, successors and assigns.

Whenever the words "Chief of Ordnance" are used herein they shall be taken to mean the Chief of Ordnance, United States Army, the Acting Chief of Ordnance, or any duly authorized representative of either.

Whenever the words "Contracting Officer" are used herein they shall be taken to mean the officer in whose name the contract is executed, his successors or assigns, his or their duly authorized agent or agents, or anyone from time to time designated by the Chief of Ordnance to act as Contracting Officer.

Whenever the words "War Industries Board" are used herein, they shall be taken to mean that Board as now constituted by executive Proclamation or Order or other properly constituted governmental agency succeeding to the duties now delegated to the War Industries Board.

Whenever the word "material" or "materials" is used herein it [fol. 72] shall be taken to mean raw cotton linters and like cotton seed products, including motes, flues, sweepings, and mill-lint.

Whenever the words "average clean mill run linters" are used herein, they shall be taken to mean mill run cotton linters, produced by one reginning of cotton seed, reasonably free of motes, flues, hull fiber, hull particles, sweepings, seed, meats, lubricating oil, excess moisture, and all foreign matter.

Whenever the word "allocatee" is used herein, it shall be taken to mean any person, firm, company or government to whom or which the Government has allocated material or materials purchased hereunder, and who or which has entered into a contract

with the Agent to purchase the amount of materials so allocated on the form of contract hereto annexed and marked "Allocatee's Purchasing Contract."

Article II

Authority of Agent.—The Agent is hereby authorized and empowered to purchase for the Government all the raw cotton linters and all the motes, flues, and sweepings usable for the manufacture of military explosives, produced in the United States, between the first day of August, 1918, and the first day of August, 1919, and as such Agent to make contracts either in the name of the Government or in its own corporate name as Agent for the Government, covering the purchase of said materials; subject, however, to the terms and conditions of this agreement.

Article III

Duties of Agent.—The Agent will maintain a main office and sufficient branch offices, and a competent organization of officials, inspectors, clerks, and such equipment and other facilities as may [fol. 73] be necessary for the efficient performance of the work. The following items of cost and disbursements will be borne by the Agent viz:

Rent, light, heat, main office expense, including telegrams, telephones, clerk hire, and the services of clerks and stenographers, branch office expenses, including inspectors' salaries, inspectors' traveling expenses, telegrams, telephones, cost of tags, tagging of linters, postage, sampling, clerks' salaries, stenographers' salaries, and interest on money borrowed or funds advanced by the Agent, and all expenses of a similar nature.

All other items of cost and disbursements will be borne by the Government, except such charges and expenses as by the terms of this agreement are required to be paid by allocatees, or from the fund mentioned in Article IV hereof.

Article IV

Mode of Procedure.—The Agent shall purchase and pay for all "average clean mill run linters" the Government fixed price of $4.67 per hundred pounds, f. o. b. cars point of production. The Agent shall purchase and pay for all raw linters inferior to "average clean mill run linters," and all motes, flues, and sweeping usable for the manufacture of military explosives, at prices lower than $4.67 per hundred pounds f. o. b. cars point of production. The prices to be paid therefor to be arrived at by negotiation between the Agent and the seller and to be graduated according to the quality of such materials. Should any dispute arise between the Agent and the seller of such materials as to the price to be paid therefor, a sample of the material approved by the seller and the Agent shall be submitted to the Contracting Officer, or his duly appointed representative, for determination of the price

to be paid therefor, and the decision of the Contracting Officer, or his duly appointed representative, shall be binding upon the Agent, the Government and the seller. The Agent will sell for the account [fol. 74] of the Government to such persons, firms, corporations and governments as the War Industries Board shall from time to time designate, the materials so purchased in quantities and qualities designated by the War Industries Board at and for the prices paid therefor by the Agent, plus the sum of twenty-six cents (26c.) per bale to cover the Agent's disbursements and compensation on account of the purchasing, inspection, tagging and shipping of said material. All such sales shall be made on the form of contract hereto annexed, marked "Allocatee's Purchasing Contract."

The allocatee shall pay the actual freight and internal revenue tax on freight shipments, and send all receipted bills, for freight and taxes paid, to the Agent for adjustment to the average freight as hereinafter set forth.

A fund to provide for the payment of freight, insurance, storage, and other charges and expenses not chargeable to the Agent as specified in Article III hereof, where necessary to carry out this plan, and to adjust freight charges paid by the allocatee to an average rate shall be created and administered as follows:

a. The Agent will charge and each allocatee shall pay on each invoice for material received in addition to the purchase price thereof and the agent's compensation of 26 cents per bale aforesaid, the sum of $1.278 per hundred pounds of material received.

b. The Agent shall pay out of this fund all charges for storing material, freight and insurance thereon up and until the time the material is shipped to an allocatee; it being agreed that all freight, insurance and storage charges required to be paid on materials purchased by the Agent before shipment to an allocatee shall be paid from this fund, and that freight, insurance and storage charges, if any, thereafter shall be borne and paid by the allocatees of said material.

[fol. 75] c. On the first day of August 1919, or as soon thereafter as may be, this fund shall be liquidated by the Agent, and any balance therein together with any interest accrued shall be forthwith distributed among the various allocatees in proportion to their respective advancements thereto.

d. It is agreed that allocatees shall ultimately pay freight on a tonnage basis irrespective of the length of the haul, the allocatee being charged the average freight determined by dividing the total amount of freight and taxes paid by all allocatees by the total number of pounds shipped to all allocatees to get the average rate per pound. This average rate will be determined by the Agent on August 1, 1919, or as soon thereafter as may be and a true statement showing: (a) the total amount of actual freight and taxes paid by allocatees; (b) the number of pounds of material shipped; and (c) the average rate determined as aforesaid shall be furnished by the Agent to all allocatees. The Agent shall adjust freight and taxes between allocatees by collecting from any allocatee, whose actual freight and tax payments are less than the average freight and

taxes on his shipments, the difference between the actual amount paid and the average freight and taxes, deducting the amount so found to be due from the allocatee's distributive share of said fund; and by paying to allocatees whose actual freight and tax payments are in excess of the average freight and taxes on shipments received the difference between the average rate and actual rate paid.

Contracts for the purchase of material hereunder shall be made on form of contract hereto attached, marked "Seller's Contract of Sale."

Article V

Records.—The Agent shall keep complete records of such character and in such form as may be approved or required by the Contracting Officer concerning the business herein prescribed, which [fol. 76] shall be retained by it for a period of six years after the termination of this contract or of any extension thereof. Such records shall at all times be open to the inspection of the Government or its duly authorized representative. The Agent shall not be required to account to the respective allocatees except upon the statements specifically referred to in paragraph d of Article IV.

Article VI

Compensation.—The compensation to the Agent for its services and disbursements in carrying out this contract shall be 26 cents for each bale of approximately 500 pounds purchased by the Agent and shipped to allocatees. This compensation shall be paid to the agent by the allocatees in the manner prescribed in the "Allocatee's Purchasing Contract," a form of which is attached hereto.

Article VII

Price Changes.—The Government reserves the right to establish from time to time a different price for average clean mill run linters, and in that event from and after the establishment of the different price the agent shall contract to purchase and sell at the newly established price. The Agent shall make no profit by reason of any change or provision upward or downward of the price of material.

Article VIII

Government Guarantee.—The Agent shall notify the Contracting Officer in writing on or before the first day of each calendar month the approximate amount of material that will become deliverable to the Government under contracts then existing during the succeeding calendar month, and the War Industries Board through proper representatives will on or before the 10th day of the [fol. 77] same month allocate said materials and furnish the Agent in writing the names and addresses of the allocatees. Thereupon, the Agent shall, as soon as may be, furnish to each of said allocatees contracts in quadruplicate, on the form herein before mentioned,

covering the purchase by the allocatee of the material so allocated. If and when said contract is executed by the parties thereto, one copy thereof shall be retained by the allocatee, one by the Agent and one shall be delivered to the Contracting Officer, and one to the War Industries Board. The Agent in all cases where the credit of the allocatee is approved by the Agent, but not otherwise, shall advance the funds required to purchase the amount of material so allocated and covered by the allocatees' contract of purchase therefor, and will obtain reimbursement for the money so advanced by the retention of the purchase price of the material so allocated as and when received by the Agent from the allocatee. It is the intention and expectation of the parties hereto that the Government will be able to allocate all materials purchased hereunder as and when said material is produced and ready for shipment, in accordance with the seller's contract of sale, to an allocatee willing to enter into the firm contract of purchase on the form of contract hereinbefore mentioned, and in this way relieve the Government of the necessity for advancing any money to carry out this plan; but it is expressly understood and agreed that the Agent does not assume the risk of finding a market for the materials so purchased by the Agent for the Government, this being assumed by the Government; nor shall the Agent be under any obligation to advance funds or complete the purchase of any material contracted for until the Government has allocated the same to an allocatee who has entered into a firm contract of purchase therefor on the form of contract hereinbefore mentioned, and whose credit is approved by the Agent.

In all cases where the Government fails, in whole or in part, to [fol. 78] allocate materials when notified as herein provided, on or before the 10th day of the same month, and in all cases where an allocatee fails for ten days after being notified so to do to enter into an allocatee's contract of purchase, as above provided, and in all cases where an allocatee's credit is not approved by the Agent, the Government will advance to the Agent $4.67 for each 100 pounds of average clean mill run linters so unallocated or so allocated to an allocatee whose credit is not approved or has so failed for ten days to enter into an allocatee's contract of purchase, and the Agent will thereupon complete the purchase for the Government of all such material, and the Government will at the time of advancing the purchase price as aforesaid furnish the Agent instructions covering the disposition of material so purchased and provide suitable storage therefor. In case the material so purchased by the Government is not later allocated as provided herein, and remains unallocated at the termination of this agreement, the Government will pay the Agent on demand twenty-six cents (26¢) per bale to cover Agent's disbursements and compensation on account of the purchase of said material.

The Government will reimburse and hold the Agent harmless on account of any expenses or disbursements made or paid by it in the carrying out of this contract on its part; excepting always the ex-

penses and disbursements covered by the twenty-six cents (26¢) per bale so to be paid by allocatees to the Agent to cover the Agent's disbursements and compensation as provided in Article III hereof.

The Government further agrees that in all cases where an allocatee, whose credit has been approved by the Agent, fails to accept and pay for material as provided in said Allocatee's Contract of Purchase, the purchase price of which material has been advanced by the Agent, the Government will on being requested so to do by the Agent accept and pay for all such material at the prices paid therefor by the Agent.

[fol. 79]

Article IX

Cancellation.—This agreement may be terminated at any time by the Contracting Officer for any reason that he deems advisable, by giving written notice of cancellation thereof to the Agent, and upon the giving of such notice the Agent's authority to act for the Government hereunder shall terminate; and the Government shall promptly reimburse the Agent for all moneys paid and laid out by the Agent in and about the carrying out of this contract on its part for which it has not been reimbursed under the contract. Upon the termination of this agreement by action of the Contracting Officer the Agent will transfer to the Government the fund created by the payment of $1.278 by allocatees as hereinbefore mentioned, and the Government will take over and assume the obligation of administering and liquidating said fund in accordance with the terms under which the fund was created.

Article X

Unless sooner terminated this agreement shall terminate and end on the first day of August, 1919, but the liabilities of the parties hereto in respect to existing unfinished or uncompleted transactions or matters arising or growing out of the carrying out of this contract shall be and remain as if no termination had occurred.

Article XI

Officials Not to Benefit.—No Member of or Delegate to Congress or Resident Commissioner is or shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this article shall not apply to this contract so far as it may be within the [fol. 80] operation or exception of section 116 of the act of Congress approved March 4, 1909 (35 Stats., 1109).

Article XII

Prison Labor.—No person or persons shall be employed in the performance of this contract who are undergoing sentences of imprisonment at hard labor which have been imposed by the courts of the several States, Territories, or municipalities having criminal jurisdiction.

Article XIII

Disputes.—Except as herein otherwise specifically provided, any doubts or disputes which may arise under this contract or as to its performance or non-performance shall be referred to the Chief of Ordnance for determination. If the Agent shall feel aggrieved at his decision, it shall have the right of appeal to the Secretary of War, whose decision shall be final.

In witness whereof, the parties hereto have caused this agreement to be executed and delivered in triplicate at Washington, D. C., the day and year first above writen.

Du Pont American Industries, Inc., (Signed) by F. L. Connable, Vice-President. Attest: (Signed) Alexis I. Du Pont, Secretary. United States of America, (Signed) by Chas. N. Black, Contracting Officer.

[fol. 81] Exhibit 7 to Petition

Seller's Contract of Sale

Purchase Contract No. 3505

Memphis, Tenn., Sept. 26, 1918.

United States of America, acting by Du Pont American Industries, Inc., duly empowered Agent, has bought of Hartsville Oil Mill, P. O. Address, Hartsville, S. C., Quantity, 4,500 Bales, approximately 2,250,000 Pounds.

Quality of Material.

Average clean mill run linters produced by one reginning of cotton seed, reasonably free of motes, flues, hull fiber, hull particles, sweepings, seed, meats, lubricating oil, excess moisture and all foreign matter.

Price.

Four and Sixty-seven Hundredths Cents ($0.0467) per pound free of exchange to Buyer, being the price fixed by the War Industries Board May 2, 1918.

Inferior Linters.

Linters not equal in quality to "average clean mill run linters" as above described, will be accepted by the Buyer at a reduced price, which price will be mutually agreed upon by the Seller and the Agent of the Buyer, but in case the Seller and the Agent of the Buyer are unable to agree on the price a sample of the material approved by the Seller and the Agent of the Buyer shall be submitted to the

Contracting Officer for determination of the price to be paid for said material, and the decision of the Contracting Officer as to price to be paid shall be final and binding on the parties hereto.

[fol. 82] Delivery.

F. O. B. cars point of production, Hartsville, S. C.

Time of Shipment.

Aug.	.....	Dec.	550.....	April	550.....
Sept.	125.....	Jan.	550.....	May	550.....
Oct.	525.....	Feb.	550.....	June	.....
Nov.	550.....	Mar.	550.....	July	.....

Inspection.

Buyer shall be notified at least ten days before each shipment is ready to move to allow for prompt examination. Bales shall be so tendered that each and every bale can be examined by Buyer thoroughly without labor or expense to Buyer. The minimum quantity for inspection at any one time shall be two hundred (200) bales.

Packages.

The material must be suitably baled with good bagging to properly protect it in shipping and securely tied with not less than six steel bands. Material improperly baled will be sufficient cause for rejection.

Shipping.

Shipping instructions will be mailed immediately to Seller by Buyer after notification from the inspector that a lot has been inspected and accepted.

Marking.

Bales shall be marked by Seller free of cost to Buyer, as instructed by Buyer.

[fol. 83] Payment.

Sight draft will be drawn by Seller on "Du Pont American Industries, Inc., Agent," at Memphis, Tennessee, with invoices, weight sheets and bills of lading attached thereto, all made out in accordance with shipping instructions from the Buyer covering each shipment made by the Seller. No draft will be paid until this contract has been signed by the Seller and returned to the Buyer, nor until Buyer has had opportunity, as hereinbefore specified, of inspection of shipment covered thereby; nor until all documents with respect thereto are in order as specified in shipping instructions therefor.

Contingencies.

In case the Seller is prevented from deliveries any or all of the material as herein provided by reason of strikes, fires, accidents, embargoes of railroads, or other causes beyond Seller's reasonable control, the Seller shall be excused from making delivery of linters while prevented from so doing by any one or more of the causes aforesaid and this contract shall as to the materiad so affected (but not otherwise) be suspended during the time such cause for delay exists, but all such linters shall be delivered as soon as practicable after such disability has been removed; provided that as to any linters not delivered within sixty (60) days after the time they should have been delivered as herein provided, the Buyer shall have the right to cancel all such deliveries.

Cancellation.

In the event of the termination of the present war, the Buyer shall have the right to cancel this contract on the first day of any calendar month thereafter by giving to the Seller on or before the first day of the month of which cancellation is to become effective a notice in [fol. 84] writing of the Buyer's intention to cancel, and this contract shall be cancelled on the date of cancellation set forth in the notice; provided, always, that the Seller shall make the deliveries herein provided to be made during the calendar month following the date on which cancellation became effective; it being the intention of the parties hereto that in event the Buyer exercises the right of cancellation it shall be exercised only on the first day of the calendar month, and that the Seller shall make the deliveries provided by the contract to be made during the thirty (30) days succeeding the date cancellation becomes effective; and provided further that in the event buyer exercises the right of cancellation as aforesaid, it will in addition to accepting deliveries for one month after cancellation hold the Seller harmless from all loss caused by such cancellation such as firm commitments for material purchased to fulfill this contract, exclusive of any profits.

The Du Pont American Industries, Inc., acts herein solely as the Agent of the Buyer, its authority to so act being contained in the contract between the Buyer and the Du Pont American Industries, Inc., dated 28th day of August, 1918, a copy of which contract is hereto attached for better information of the Seller with respect to its authority in the premises, and no warranty of authority is to be taken or inferred from said Company's acting as Agent in the premises.

Dated this 26th day of Sept., 1918.

United States of America, by Du Pont American Industries, Inc., Its Agent, per A. K. Burrow, Manager, Hartsville, Oil Mill, by J. J. Lawton, Pres. & Treas.

[fol. 85] EXHIBIT 8 TO PETITION

New Rules Based on Stabilized Prices

United States Food Administration

Circular No. 49

Washington, D. C., September 7, 1918.

To all crushers of cotton seed and the purchasers of products thereof:

As heretofore announced, the United States Food Administration, under Rule 8 of the rules governing crushers of cotton seed, will consider $18.50 over the price paid for cotton seed as a fair advance in selling the products thereof.

Based upon the stabilized prices of cotton seed at the average agreed to by the producers and the United States Food Administration, and upon the crushing margin of $18.50 thus fixed, the following basic prices for the various cotton seed products have been approved by the Food Administration, effective September 7, 1918.

1. Basis prime crude cotton seed oil, 17½ cents per pound, loose, f. o. b. tank cars, at point of manufacture, in accordance with the agreement of oil refiners and lard substitute manufacturers to move this year's crush to the best of their ability on that basis.

2. Cotton seed meal and screened cracked cake 43 per cent protein in any quantity, $57 per ton in sacks, f. o. b. all points of manufacture in Texas.

3. Cotton seed meal and screened cracked cake 40 per cent protein in any quantity, $54 per ton in sacks, f. o. b. all points of manufacture in Oklahoma.

[fol. 86] 4. Cotton seed meal and screened cracked cake 36 per cent protein in any quantity, $51 per ton in sacks, f. o. b. all points of manufacture in Imperial County, California, and $55 per ton in sacks, f. o. b. all points of manufacture in Los Angeles County, California.

5. Cotton seed meal and screened cracked cake 36 per cent protein in any quantity, $53 per ton in sacks, f. o. b. all points of manufacture in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina and Tennessee.

6. Bulk, loose or slab cotton seed cake shall be not less than $5 per ton, and bulk or loose cotton seed meal and screened cracked cake shall be not less than $4 per ton, under the prices specified above.

7. Cotton seed hulls, bulk or loose, any quantity, $20 per ton, f. o. b. cars at point of manufacture.

8. Prices specified herein are net to manufacturer. Terms of sale are upon the basis of cash or its equivalent. In making sales on

credit, except to manufacturers and wholesalers, an amount not exceeding $1 per ton may be added to prices specified above.

9. All cotton seed meal, screened cracked cake, bulk cake showing protein content other than above specified may be offered and sold at $1 for each unit protein over or under the percentages as shown above. Provided, however, if cotton seed meal or cake upon delivery is ascertained to be of lower protein content than justified by price charged, any refund must be made at the rate of $1.40 per unit protein. Each shipment or delivery shall be considered separately and without relation to the whole contract. This rule must not be construed in any way as an exception to the Pure Food Act of 1906 or any of the amendments thereto.

10. All manufacturers are urged to give preference in the sales of their products to producers and consumers.

[fol. 87] 11. Under the Food Administration regulations, manufacturers of cotton seed meal, cake and hulls are not permitted, to the exclusion of consumers, to make sales of their products to firms, factories or corporations in which the corporation or the officers of the producing mill may be interested, without the written consent of the food Administration.

12. The price of cotton seed in each zone will be worked out by the Federal Food Administrators of the various States, on the basis of stipulated yields in those zones.

13. Cotton seed crushers will be permitted to sell all manufactured products in excess of the basic yields without reference to the established margin, provided that the price charged for such excess products shall not exceed the price indicated for the other products in said yield.

14. Jobbers properly engaged in the distribution of cotton seed meal, cake or hulls are permitted to add to their purchase price from the mill (as above indicated) the margins prescribed for them by the Food Administration.

15. Only one margin is permitted, and if such products are handled by two jobbers they may divide the margin.

16. Brokers properly engaged in the distribution of cotton seed, cotton seed oil, meal, cake or hulls are permitted to receive from either buyer or seller the brokerage as prescribed by the Food Administration.

Yours very truly, United States Food Administration, by Hugh Humphreys, Cotton Seed Industry Division.

[fol. 88] EXHIBIT 9 TO PETITION

Proposed form of settlement between cotton-seed oil mills and Government linter pool, approved by Mr. Baruch, chairman of War Industries Board, and now awaiting approval of Secretary of War Baker.

Washington, D. C., December 10, 1918.

The Committee of oil millers have considered the proposition submitted on Saturday last by Major Gelshenen of the Ordnance Department for settlement under the proposed termination of linter contracts, and must reject the same as unsatisfactory and insufficient to assure them against serious loss, and against disruption of the stabilization plan of the Food Administration, under which the farmers and the consumers of products have certain economic guarantees.

The Committee submits that the only basis of settlement that would be fair and just to all interests concerned, and which would strictly conform to the agreements entered into by the Government, through the War Industries Board and the Food Administration with the mills at the beginning of the season, and which proposition the Committee could conscientiously recommend to the mills they represent, would be a plan as follows:

1. The Government "Linter Pool" to buy and take up promptly, under existing rules, all clean mill run "munition" linters and all cleaned motes, flues and sweepings produced to December 21st, 1918, at the fixed price of $4.67 per cwt. f. o. b. mills, points of production.

2. The mills to change their linter production not later than December 21st to the types known as mattress linters, according to grades and samples to be decided upon jointly by committees of the [fol. 89] War Industries Board, the oil mills and the mattress manufacturers, to be sold at price to be fixed by the War Industries Board in accordance with such joint agreements, and to produce to the mills $6.77 per ton of seed crushed, which is the amount guaranteed the mills for their linter output for the entire season by the War Industries Board, and the amount figured in the seed prices paid and to be paid the farmers under the Food Administration's plan of stabilization.

3. That the "Pool" be obligated to buy at the end of the season, July 31, 1919, all stocks of linters in the hands of original producers, according to the agreed upon grades, and at prices that would compensate the mills for any loss below the fixed $6.77 per ton of seed, or in the event the Government does not care to exercise its right to buy, then the mills to be compensated for the actual damage or loss incurred on this basis.

4. Permit the sale of "munition" linters owned by the "Pool" on the markets, at a price not less than 4 3/4¢ per pound to July 1st, 1919.

5. If the War Industries Board and the War Department will approve the principles of this form of settlement, the details can be worked out by conference in a few days.

(Signed) R. E. Montgomery, Chairman; J. J. Lawton, G. W. Covington; Louis N. Geldert, Sec'y of Committee, Special Committee from the War Service Committee of the Interstate Cotton Seed Crushers' Association.

[fol. 90] EXHIBIT 10 TO PETITION

"United States Food Administration, Washington, D. C.

"December 10, 1918.

"Referring to the copy of proposed form of settlement between the Cotton Seed Oil Mills and the Government 'Linter Pool,' dated Washington, D. C., December 10, and submitted by a special committee from the War Service Committee of the Interstate Cotton Seed Crushers' Association, I beg to say that any plan for readjustment of your linter agreement with the industry that does not change the value of linters produced per ton of seed, namely, $6.77, would not only not interfere with the stabilization plan of the Cotton Seed Section of the Food Administration, but would materially assist it in carrying out its agreement with the producers and the various elements of the industry, resulting in the stabilization of this commodity.

"With reference to this particular proposed plan submitted, in our opinion the above result would be accomplished.

"Yours very truly, U. S. Food Administration, Division of Collateral Commodities. Per (Signed) S. J. Cassels, Cotton Seed Industry Section.

"Approved: Robt. E. Cranston, Chief Collateral Commodities Div."

"1. Attached hereto please find copy of proposed form of settlement betwe-n the Cotton Seed Oil Mills and the Government Linter [fol. 91] Pool, as submitted to this Section by a special committee from the War Service Committee of the Interstate Cotton Seed Crushers' Association, under date of December 10.

"2. This plan has the unqualified approval and endorsement of the Chief of the Section, in that it is entirely in accordance with what he believes to be the moral obligation of the United States and Allied Governments to purchase all of the lint available from the seed of the present crop of cotton, the season ending July 31, 1919.

"3. This opinion is predicated, first, upon the plan of organization of the Cotton and Cotton Linter Section of the War Industries Board, which was approved by the Board on May 29, 1918. Also,

upon the action of the Price-Fixing Committee of the War Industries Board wherein, under date of May 1, the Chief of the Cotton and Cotton Linter Section was advised by the Secretary of the Price-Fixing Committee as follows:

"'Am pleased to advise that after receiving due consideration by the Price-Fixing Committee your recommendation of April 23 naming a price of $4.67 per hundred pounds f. o. b. points of production, has been approved. The Price-Fixing Committee also approves your recommendation that the Government, through its agents, acquire, purchase and distribute entire stock and production of linters covering a period from August 1, 1918, to July 31, 1919.'

"4. Still further, upon the fact that the formation of and the rules governing the Cotton Linter Pool (with which this plan conforms entirely) was the result of a meeting held in the Section on July 2, 1918, and had the approval of Lt.-Col. Chas. N. Black of the Procurement Division of the Ordnance Department.

"5. From the beginning of the present season, August 1, 1918, the purchase of cotton linters by the Government, through the Du Pont American Industries, acting as the authorizd purchasing agents for the Ordnance Department, linters have been purchased by the Government and were produced by the Cotton Seed Crushing In- [fol. 92] dustry in full accordance with these rules, and so contained during the entire period up to the present time.

"6. The plan submitted is further approved because of the interrelationship of the U. S. Food Administration, having complete jurisdiction over and the licensing of the entire cotton seed crushing industry and its obligations to the industry and to the producers of cotton seed, as well as over the collateral interests in the commodity and the War Industries Board, together with the Ordnance Department, acting by agreement for all branches of the United States Government and for the Allies, and upon the interrelationship being a moral obligation which, for the preservation of the integrity of the Government, should be preserved.

"7. The plan has the approval of the U. S. Food Administration, the War Service Committees of the Mattress, Felt and Batt Manufacturers, the National Batt Manufacturers and the National Association of Bed Manufacturers, which organizations are in thorough sympathy with the desire for the stabilization of values of the raw material in the interests of the manufacturers and labor employed in the industries using cotton linters commercially.

"Respectfully submitted, Geo. R. James, Chief."

The matter is, therefore, under consideration of the Ordnance Department at this time.

Geo. R. James, Chief Cotton and Cotton Linter Section, War Industries Board. Marjorie Peets, Secretary.

[fol. 93] EXHIBIT 11 TO PETITION

Modification of Seller's Contract of Sale

This agreement made this thirty-first day of December, 1918, by and between Hartsville Oil Mill, hereinafter called the Seller, and the United States of America, hereinafter called the Buyer, acting by and through the Du Pont American Industries, Inc., its duly authorized agent,

Witnesseth:

Whereas the parties hereto entered into a contract dated Sept. 26, 1918, designated as Seller's Contract of Sale and being Purchase Contract No. 3505 for the purchase of cotton linters for use in the conduct of the war; and

Whereas the conditions have changed since the execution of the said contract, which render it desirable that the same should be modified; and

Whereas the Buyer under said contract has served notice on the Seller that the Buyer would on January 1, 1919, cancel said contract under the provisions contained therein relating to cancellation; and

Whereas a dispute thereupon arose between the Buyer and the Seller as to the right of the Buyer to cancel said contract, the said dispute growing out of the question as to whether or not the war has terminated; and

Whereas a further dispute has arisen between the Buyer and the Seller as to what is the measure of damages provided by said contract for the loss, if any, to the Seller, which would be caused by the cancellation of said contract; and

Whereas contracts similar to the said contract have been entered into by the Buyer with practically all concerns engaged in the crushing of cot-on seed and the production of linters, as more particularly appears in said contracts; and

Whereas it is for the best interests of the United States to arrange [fol. 94] for a settlement of said disputes by a modification of said contract, under which modification the Buyer will be required to receive and pay for a less quantity of linters than is provided for by the terms of the contract aforesaid.

Now, therefore, in lieu of cancellation of said contract and in consideration of the premises and the mutual agreements herein contained the said parties have agreed, and by these presents do agree, with each other, to the following modification of the contract aforesaid:

(1) That on and after January 1, 1919, no linters shall be cut under said contract of a lower quality than grade No. 3, as established by agreement on December 31, 1918, between the War Service Committees of the Cottonseed Crushers and the manufacturers of mattresses and batting at a meeting held under the auspices of the Food Administration.

(2) That the Seller under the contract aforesaid shall forthwith furnish to the agent of the Buyer a statement verified by affidavit of the quantity and character of linters, cleaned motes, flues and sweepings, which have not been delivered to and paid for by the Buyer, and which have been cut by the Seller prior to January 1, 1919, and are now on hand.

(3) All linters produced prior to and on hand as of January 1, 1919, of lower grade than grade No. 3, as agreed upon on December 31, 1918, by crushers and mattress manufacturers and complying with specifications of original contract, and all cleaned motes, flues and sweepings shall be inspected and paid for by the Buyer at $0.0467 per pound; and all linters produced prior to and on hand as of January 1, 1919, of grade No. 3 and better, shall be inspected, taken and paid for by the Buyer at $6.77 per ton of seed crushed in the production of said linters, the number of tons of seed crushed to be arrived at from the verified records of the Seller.

[fol. 95] Payment for linters, cleaned motes, flues and sweepings, of grade No. 3 and better, produced prior to and on hand as of January 1, 1919, shall be made (where they have been inspected and tagged), within ten (10) days from the date of signing of this agreement by the Seller, and the remaining stock thereof which have not been inspected and tagged, shall be inspected, tagged, and paid for within twenty (20) days after the signing of this agreement by the Seller.

(4) That the Buyer shall receive and pay for all linters cut on and after January 1, 1919, and prior to July 31, 1919, which remain on hand and unsold by the Seller as of July 31, 1919, but the total quantity of such linters shall not exceed 150,000 bales. The quantity of such linters on hand and the method of determining how many bales shall be furnished by the Seller, shall be determined as follows:

On July 31, 1919, the Seller shall furnish the Buyer with a statement, verified by affidavit, of the linters then on hand produced by it, and which have been cut on and after January 1, 1919, and the quantity of such linters which the Seller has on hand shall be added to the quantity of linters cut on and after January 1, 1919, and on hand as of July 31, 1919, by all other Sellers who have entered into contracts similar to the contract aforesaid, said aggregate quantity of linters cut on and after January 1, 1919, and on hand and unsold on July 31, 1919, shall be ascertained as follows:

All Sellers who execute an agreement similar to this agreement shall furnish like verified statements of such linters on hand July 31, 1919, produced by them, and the Buyer and Seller will ascertain from the Census Bureau, Department of Commerce, the quantity of linters cut on and after January 1, 1919, and unsold and on hand by Sellers holding contracts similar to the original contract aforesaid, who do not sign a similar agreement, and said quantities of linters shall be added together. The Seller will be entitled to deliver to the [fol. 96] Buyer, and receive payment therefor, such proportionate

part of the 150,000 bales of linters as the amount the Seller has then on hand bears to the aggregate quantity thus ascertained. Should the total quantity of linters so cut by all said crushers, and on hand and unsold, July 31, 1919, be less than 150,000 bales, then the Buyer will take from the Seller who has signed this agreement and pay for all such linters the Seller has on hand July 31, 1919, so cut and unsold.

(5) Prices at which said linters shall be so taken and paid for by the Buyer are as follows:

8½c. per pound for No 1 grade;
7c. per pound for No. 2 grade;
6c. per pound for No. 3 grade.

These grades were established on December 31, 1918, by agreement between the War Service Committees of the Cotton Seed Crushers and the manufacturers of mattresses and batting, at a meeting held under the auspices of the Food Administration.

The verified statement of Seller furnished to the Buyer showing the quantity of lint on hand as of July 31, 1919, cut by it on and after January 1, 1919, and unsold by it on July 31, 1919, shall be subject to inspection and audit, and payment for such lint shall be made by the Buyer to the Seller as follows:

If all the Sellers having contracts have signed agreements similar to this, payment shall be made within fifteen (15) days after July 31, 1919, provided said linters have been inspected and tagged, or within twenty-five (25) days after July 31, 1919, if they have not been so inspected and tagged; if, however, all Sellers having contracts do not sign agreements similar to this, the payments shall be made within ten (10) days after the information is received from the Census Bureau of the Chamber of Commerce.

(6) It is a part of this agreement that the Buyer shall have the right to require the Seller to store the linters cut prior to January 1, [fol. 97] 1919, purchased by the Buyer from the Seller and paid for. The Seller, where it has space to do so, will store the same at the Buyer's risk and without charge for storage; no insurance to be carried by the Seller. Such lint as is cut after January 1, 1919, and which is deliverable under this contract on July 31, 1919, will be stored by the Seller as provided for herein. The Buyer, however, shall not require the Seller to store such lint after September 1, 1919, except by mutual agreement. The Seller shall be responsible for all lint until accepted and paid for by the Buyer.

The Buyer shall pay the actual cost of preparation for storage and labor, etc., connected therewith, and in addition furnish tarpaulins and sleepers necessary for storing in the open, should the Buyer so desire. Where said lint is stored with any other person than the Seller, the Buyer will pay the charges for such storage, such payments to be made quarterly. The Buyer shall in any event during the storage reimburse the Seller the amount of any increase in premium for insurance carried on the Seller's property directly attributable to increased fire hazard caused by the storage of such lint.

Should the Seller not have space in which to store the lint so purchased and paid for under this contract, the Seller agrees to procure such space at the Buyer's expense and subject to the approval of the Buyer. All cost of removing said lint and storing same on such space so acquired to be paid for by the Buyer.

The obligation of the Seller to provide or secure storage shall be at the option of the Buyer and said lint shall be held subject to the Buyer's demand. The Seller shall, from time to time, report to the Buyer the condition of the linters and the Seller shall take any necessary steps to preserve the linters. Where lint cut prior to January 1, 1919, has been inspected and accepted heretofore, but has not been moved or paid for by the Buyer and has been put in storage other than its own by the Seller and payment has to be made for such [fol. 98] storage to others than the Seller, the Buyer will pay such actual storage charges, including the labor connected therewith, and the expense of hauling.

Upon the execution of this agreement, and upon compliance with its terms by the Buyer, the Seller releases the Buyer from any and all claims or demands in law or in equity arising or growing out of any change, modification or interruption in purchases, deliveries and/or quantities of linters prescribed in the Seller's Contract of Sale above referred to.

The Du Pont American Industries, Inc., acts herein solely as the Agent of the Buyer under direction of the Ordnance Department and of the Secretary of War and no individual liability is assumed by the Agent by reason of anything herein contained.

In witness whereof the parties hereto have caused this agreement to be executed, in triplicate, by their respective officers, duly authorized, the day and year first above written.

United States of America, by Du Pont American Industries, Inc. (Buyer), per M. E. Woodson. (Seller) Hartwell Oil Mill, by J. J. Lawton, Pres. & Treas.

Approved as to form and substance:

(Sig.) R. P. Lamont, Colonel, Ord. Dept., U. S. A., Contracting Officer. (Sig.) B. Crowell, Asst. Secretary of War.

[fol. 99] II. General Traverse—Filed July 28, 1923

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Robert H. Lovett, Assistant Attorney General.

III. Argument and Submission

On April 22 and 23, 1925, this case was argued and submitted on merits by Messrs. Christie Benet and Wade H. Ellis, for the plaintiff, and by Mr. Roscoe R. Koch, for the defendant.

[fol. 100] IV. **Findings of Fact, Conclusion of Law, and Memorandum**—Filed May 11, 1925

This case having been heard by the Court of Claims, the Court, upon the evidence, makes the following

Findings of Fact

I

On March 23, 1923, the Senate of the United States passed a resolution numbered 448, referring Senate bill numbered 4479, entitled, "A Bill for the Relief of Rose City Cotton Oil Mill and Others," to the Court of Claims, under the provisions of the act of Congress of March 3, 1911, designated as the Judicial Code. Plaintiff is one of the two hundred and eighty-five claimants named in said bill. Copies of said resolution and said bill are attached to the petition as Exhibits 1 and 2, and made a part hereof by reference.

II

Plaintiff is a corporation of the State of South Carolina with its principal office in the city of Hartsville, in said State; is engaged in the manufacture of derivative products of cottonseed, namely, cottonseed oil, cottonseed meal, cottonseed hulls, and linters, and has been so engaged at all times since 1909. Plaintiff has at all times borne true allegiance to the Government of the United States and has never voluntarily aided, abetted or given encouragement to rebellion against the United States, and is the sole owner of the claim presented in its petition; and no assignment or transfer of such claim or part thereof or interest therein has been made.

III

On April 6, 1917, Congress by joint resolution declared that a state of war existed between the United States and the Imperial German Government, and on December 7, 1917, by joint resolution, declared that a state of war existed between the United States and the Imperial and Royal Austro-Hungarian Government. Subsequent to the date first above named the demand for linters for munition purposes was very greatly increased due to war activities.

[fol. 101]

IV

On or about July 28, 1917, the War Industries Board was organized under the provisions of an act of Congress approved August 22, 1916; and on March 4, 1918, the President of the United States, by virtue of enabling statutes theretofore enacted, reorganized the War Industries Board, and by letter of that date addressed to Bernard M. Baruch outlined the functions constitution and action of said reorganized board, and appointed Bernard M. Baruch as chairman. Bernard M. Baruch accepted said appointment and continued to act as chairman until said board was disbanded and ceased to function on or about December 21, 1918.

V

On August 10, 1917, the President of the United States, by virtue of an act of Congress of even date, commonly known and designated as the Food and Fuel Control Act (Pub. Act. No. 41, 65th Cong.), issued an Executive order or proclamation organizing the United States Food Administration and appointed Herbert Hoover as United States Food Administrator. Herbert Hoover accepted such appointment and continued to act as such Food Administrator until said Food Administration ceased to function and was disbanded, on or about May 31, 1919. A copy of said Executive order or proclamation is attached to the petition as Exhibit 3, and made a part hereof by reference.

VI

On October 8, 1917, the President of the United States, acting under the authority conferred upon him by the said Food and Fuel Control Act, issued an Executive order or proclamation placing under license control of the United States Food Administration all dealers in cottonseed and manufacturers of cottonseed products, including this plaintiff. Plaintiff subsequently applied for and received a license to operate its plant from the United States Food Administration, numbered G-12588, dated November 1, 1917, which provided that the same should be revoked upon the failure, neglect, or refusal of plaintiff to comply at all times with any and all orders, rules and regulations of the said Food Administration. Plaintiff complied at all times with each and every one of said orders, rules, and regulations, and operated its plant under said license and by sufferance of said Food Administration. A copy of the Executive order or proclamation organizing the United States Food Administration is attached to the petition as Exhibit 4, and made a part hereof by reference.

VII

On March 14, 1918, the President of the United States, by virtue of enabling statutes theretofore enacted, appointed a Price-Fixing Committee to advise upon the basic price of war materials and neces-

sary commodities. Said Price-Fxing Committee, on or before May 2, 1918, approved the price of $0.0467 per pound for linters, as theretofore agreed upon between the Cotton and Cotton Products Section of the War Industries Board and the cottonseed oil mills.

[fol. 102]

VIII

On April 4, 1918, the War Industries Board formed a special section, designated as the Cotton and Cotton Products Section, to deal with linters, and appointed George R. James as chief of said section. On May 2, 1918, the said section, acting in accordance with the agreement referred to in Finding VII, fixed the price of all linters during the period from May 2, 1918, to July 31, 1919, at $0.0467 per pound f. o. b. point of shipment. The plaintiff was required during said period to cut a minimum of 145 pounds of linters from every ton of seed crushed. The plaintiff subsequently entered into a contract with the United States with respect to linters which it was to furnish to the Government, and said contract established the price which was to be paid for linters.

IX

After the outbreak of the World War and during the period prior to May 2, 1918, plaintiff produced and sold on the open market mattress and munition-type linters, but during the period from May 2, 1918, to July 31, 1919, the plaintiff and other cottonseed crushers produced and sold only to the Du Pont American Industries, Inc., sole purchasing agents of the United States, linters. This was done in accordance with the terms and provisions of contracts in writing entered between the plaintiff and the United States.

X

Prior to August 28, 1918, the Du Pont American Industries, Inc., acted as the sole purchasing agents of the United States, its allies, and associates in the World War, under an informal agreement with the Ordnance Department of the United States Army. On said date, said informal agreement was reduced to writing, and the said agents undertook for a consideration to purchase all linters produced in the United States during the period ending July 31, 1919, and did so purchase from plaintiff. A copy of the written agreement between the Du Pont American Industries, Inc., and the Government of the United States is attached to the petition as Exhibit 6 and made a part hereof by reference.

XI

On September 7, 1918, the United States Food Administration, acting for and on behalf of the Government of the United States, issued its Circular No. 49, a copy of which is attached to the petition

as Exhibit 8 and made a part hereof by reference. The said Food Administration fixed the price which plaintiff and all other cottonseed crushers were to pay for cottonseed; the price at which plaintiff and all other cottonseen crushers were to sell cottonseed oil, cottonseed meal, and cottonseel hulls; the maximum freight allowance, the maximum operating cost per ton of seed crushed; and the maximum profit per ton of cottonseed crushed and converted, to apply for the season ending July 31, 1919. This schedule of [fol. 103] prices fixed by the United States through its agencies, the Food Administration and the War Industries Board, and affecting the prices of cottonseed and the crushing of the same and the disposition of the products thereof, was known and spoken of as the stabilization scheme of the Food Administration. Plaintiff had no voice in fixing the price to be paid for the cottonseed, nor in the fixing of the price of derivative products, nor in the freight allowance, nor in the operating costs and profit. Plaintiff complied at all times with all of the provisions of said circular.

XII

On or about September 28, 1918, the du Pont American Industries, Inc., acting for and on behalf of the Government of the United States, sent to plaintiff a printed form of contract with directions to execute and return the same. Said contract covered the purchase of all linters then in possession of plaintiff and all linters to be produced by it during the season ending July 31, 1919, and named the price of $0.0467 per pound. Plaintiff protested as to the cancellation clause contained in the said contract to George R. James, Chief of the Cotton and Cotton Products Section of the War Industries Board. George R. James advised plaintiff to execute the contract as written, stating that he would attempt to have the cancellation clause therein stricken out in order to have the written contract conform with previous understanding. Plaintiff thereupon executed said contract, and carried out all the terms thereof and instructions of the Government with reference thereto. The said James had no connection with the Ordance Department, and had no authority to act for it, and was not a party to the contract. A copy of said contract is attached to the petition as Exhibit 7 and made a part thereof by reference.

XIII

The Government, in accordance with the contract of September 26, 1918, paid for all of the munition linters produced by the plaintiff up to and including December 31, 1918, when the contract was terminated by mutual agreement, and a settlement contract executed by the parties as hereinafter stated.

XIV

On November 11, 1918, an armistice was duly signed between the Government of the United States, its allies and associates in the

World War, on the one hand, and the Imperial German Government and i-s associates, on the other hand, whereby hostilities were suspended for a period of 0 days, and hostilities were never thereafter resumed.

XV

Thereafter, on November 28, 1918, the plaintiff and all the other cottonsced-oil mills received a telegram from Mr. George R. James, chief of the Cotton and Cotton Linters Section of the War Industries Board, after consultation with representatives of the Ord-ance [fol. 104] Department and Du Pont American Industries, Inc. Said telegram was in words and figures as follows:

"You are requested to notify all of your cottonseed-oil mills to discontinue the cutting of munition linters and to reduce the cut to 75 pounds or less at the earliest possible moment. When reduction in cut is begun, an accurate record of seed crushed and linters produced should be made and preserved pending definite and final arrangement for the discharging of all obligations of the Government linter pool to the mills and the removal of all rules and restrictions now in force. This request is made to avoid as much as possible an obvious economic waste, and is at the suggestion of officials of the Ordnance Department. It is hoped that a prompt and definite plan for the settlement can be offered in a few days."

Plaintiff complied with said request and thereafter produced only linters of the specified type.

XVI

At or about the time of said notice of November 28, 1918, plaintiff and other cottonseed crushers also received notice from the Cotton and Cotton Products Section of the War Industries Board, acting for the Government of the United States, that definite and final arrangements for the discharge of all obligations of the Government to the plaintiff and the other cottonseed crushers would be made and that a prompt and definite settlement would shortly be offered. After a conference with representatives of the Government on December 10, 1918, a Linter Committee of the Interstate Cotton Seed Crushers' Association, acting for and on behalf of this plaintiff and other cottonseed crushers, submitted a final offer of settlement to the representatives of the Government for the adjustment of the obligations of the Government under the said contract, which offer of settlement provided that the United States would take up and pay for all linters on hand as of that date, and would also take up and pay for all linters to be produced thereafter to July 31, 1919, at a price which would net the producers $6.77 per ton of seed manufactured for the linters from such seed. Said offer was approved by the War Industries Board and the United States Food Administration. Copies of said offer and approvals are attached to the petition as Exhibits 9 and 10 and made a part hereof by reference. Said offer

of compromise was rejected by the Ordnance Department, the other party of the contract.

XVII

On or about December 21, 1918, the War Industries Board ceased to function, and the Linter Committee, representing this plaintiff and other cottonseed crushers, were notified that all negotiations relative to the settlement of the obligations of the Government under the said contract must in the future be carried on with the Ordnance Department of the United States. On December 30, 1918, a final conference was held regarding the adjustment and settlement of the obligations of the Government to the cottonseed crushers in Washington between the Linter Committee and the representatives of th Ordnance Department, and a final determination between the parties was arrived at.

[fol. 105] XVIII

On December 30, 1918, the officers representing the Government in final conference with the Linter Committee, notified the cottonseed crushers and this plaintiff through said Linter Committee that the Government would settle its obligations to the cottonseed crushers only by taking what linters were on hand, inspected, and tagged, amounting to about 270,000 bales, and would take only a part of the linters thereafter produced by the crushers from January 1, 1919, to July 31, 1919, not to exceed 150,000 bales, if so much remained on hand unsold at that date, the amount taken to be prorated among the mills.

At said time said officials representing the Government notified the cottonseed crushers and this plaintiff that unless they accepted such offer above referred to within one hour from the time it was made, or by 7 o'clock p. m. of the same day, that the Government of the United States would breach the contract of September 26, 1918, would refuse to accept or pay for any linters whatever, either those on hand, accepted, inspected, and tagged or thereafter to be produced, and that plaintiff and other cotton seed crushers could seek their remedy in the courts.

XIX

On December 30, 1918, at the time the Government officials made a final statement to the Linter Committee of what they would do, there were numerous cottonseed crushers, as well as bankers, farmers, and others interested in the cottonseed-crushing industry, present in Washington awaiting the outcome of the conference with the officials of the Government.

At 7 o'clock that evening the plaintiff and other cottonseed crushers, preserving their protest against the Government's interpretation of the terms of the contract and the position taken by the Government officials based thereon, notified the officials of the Govern-

ment that the cottonseed crushers yielded to the demand of the Government officials and would accede to the requirement of modification of "Seller's Contract of Sale."

XX

On December 31, 1918, plaintiff and other cottonseed crushers received notice from the Ordnance Department of the Army by telegram that the contract of September 26, 1918, was canceled. This telegram was in the following words and figures:

"Washington, D. C., December 30, 1918.

"Your contract for linters with Du Pont American Industries, Agent for United States Ordnance Department, is cancelled. Your committee has tentatively agreed upon a form of settlement contract. Reply Major Hawkins, Contract Section, Procurement Division."

On January 2, 1919, the plaintiff and other cottonseed crushers received from the Du Pont American Industries, Inc., sole purchasing agents of the United States, a printed form of settlement con- [fol. 106] tract embodying the verbal agreement between the representatives of the crushers and the Ordnance Department of December 30, 1918. Accompanying said printed contract was a copy of a letter written by the Ordnance Department to the Du Pont American Industries, Inc., stating inter alia that—

"8. If any producer declines to execute such instrument, the Ordnance Department will authorize you to decline to accept from such producer any linters whatever, and the United States will reimburse you for any proper expenditures and costs incurred or resulting by reason of such action on your part."

This letter, including the paragraph above quoted, was prepared by representatives of the government and counsel for the plaintiff and other crushers acting jointly. Paragraph 8 was inserted at the request of and with the consent of the counsel for the crushers, who desired the same settlement to be made by all the crushers, so that non of the crushers would be in a position to get a more favorable settlement, or settlements differing from those that the crushers would get who were represented by the crushers committee and by its counsel. Under date of December 31, 1918, the plaintiff and defendant, by its agent, Du Pont American Industries, Inc., executed in writing a settlement contract which appears at page 93 of the record and is made a part hereof by reference, and which recites inter alia the following preamble:

"Whereas the parties hereto entered into a contract dated September 26, 1918, designated as Seller's Contract of Sale and being Purchase Contract No. 3505 for the purchase of cotton linters for use in the conduct of war; and

"Whereas the conditions have changed since the execution of the said contract, which render it desirable that the same should be modified; and

"Whereas the buyer under said contract has served notice on the seller that the buyer would on January 1, 1919, cancel said contract under the provisions contained therein relating to cancellation; and

"Whereas a dispute thereupon arose between the buyer and the seller as to the right of the buyer to cancel said contract, the said dispute growing out of the question as to whether or not the war has terminated; and

"Whereas a further dispute has arisen between the buyer and the seller as to what is the measure of damages provided by said contract for the loss, if any, to the seller, which would be caused by the cancellation of said contract; and

"Whereas contracts similar to the said contract have been entered into by the buyer with practically all concerns engaged in the crushing of cottonseed and the production of linters, as more particularly appears in said contract; and

"Whereas it is for the best interests of the United States to arrange for a settlement of said disputes by a modification of said contract, under which modification the buyer will be required to receive and pay for a less quantity of linters than is provided for by the terms of the contract aforesaid.

"Now, therefore, in lieu of cancellation of said contract and in consideration of the premises and the mutual agreements herein contained the said parties have agreed, and by these presents do agree, [fol. 107] with each other, to the following modification of the contract aforesaid."

Said contract provides for changes in the quantity of linters to be produced by plaintiff and purchased by the United States, and the prices to be paid therefor, and concludes with the following release to the Du Pont American Industries, Inc., the duly authorized agent of the United States:

"Upon the execution of this agreement, and upon compliance with its terms by the buyers, the seller releases the buyer from any and all claims or demands in law or in equity arising or growing out of any change, modification, or interruption in purchases, deliveries, and/or quantities of linters prescribed in the Seller's Contract of Sale above referred to."

All the other cottonseed crushers mentioned in Senate Bill No. 4479 executed contracts as of the same date, of the same effect and import, and containing the foregoing provisions.

Said contract was approved and signed also by Col. R. P. Lamont, contracting officer, and by Hon. B. Crowell, Assistant Secretary of War. The following memorandum was on January 2, 1919, signed respectively by Senator Benet, counsel for the plaintiff, and by Major Hawkins and Major Gelshenen:

"I am familiar with the settlement described under date of January 2, by R. P. Lamont, Colonel, Ordnance Department, regarding linters, and am able to state that this settlement is one which would be approved by Mr. B. M. Baruch, chairman of the War Industries Board, and by Mr. George R. James, chairman of the Linters Section, War Industries Board, both of whom are now out of the city and not expected to return for some time."

XXI

Plaintiff and other cottonseed crushers continued during the period from January 1, 1919, to May 31, 1919, to manufacture mattress-type linters in accordance with the terms of the settlement contract. No protest was, at any time, made by the plaintiff or any other crushers as to the signing of the settlement agreement of December 31, 1918, until after May 31, 1919, when an attempt was made before the Board of Contract Adjustment of the War Department to set aside the settlement agreement. On June 29, 1919, the plaintiff and the other crushers filed their claims with said board. The board denied the claimants relief. On appeal, the Secretary of War affirmed the action of the board.

XXII

The plaintiff produced from seed crushed during the period from January 1, 1919, to and including July 31, 1919, certain linters over and above those taken and paid for by the United States, and expended certain storage charges upon linters produced during said period, for which it has not been paid by the United States. The contract did not provide that storage charges should be paid for by the United States, but on the contrary provided that "the Seller, where it has space to do so, will store the same at buyer's risk and without charge for storage." The plaintiff crushed during the [fol. 108] period January 1, 1919, to August 1, 1919, 10,180 tons of linters, at $6.77 per ton; this amounts to the sum of $68,918.60. The plaintiff claims for storage charges the sum of $1,955.50. The United States paid the plaintiff the sum of $62,193.80, and the plaintiff received for linters sold to others the sum of $757.35, making in all the sum of $62,951.15. The amount paid the plaintiff was its proportional share under the contract of December 31, 1918. The amount unpaid is the sum of $5,967.45.

XXIII

Plaintiff and other cottonseed crushers were under the orders and regulations of the Food Administration to maintain the price of cottonseed and cottonseed products theretofore fixed by the Food Administration, and to continue the manufacture of such products for the entire crop year of 1918-19. The production of linters is a necessary part of the manufacturing process of extracting oil and other valuable contents from cottonseed. Linters can not be bought by the crushers as a raw material, but are purchased as a part of and

attached to the cottonseed. The crushing of cottonseed is a seasonal business, due to the fact that seed will not keep, but owing to the high oil content, will, if kept in large quantities for any length of time, heat and spoil.

XXIV

There are no claims, liquidated or unliquidated, existing in favor of the United States against plaintiff which the United States can set off or counterclaim against plaintiff, and there has been no delay or laches by plaintiff in presenting or prosecuting its claim, and the same is not barred by any statute of limitations; and the said claim is in amount and character the same, with respect to the Hartsville Oil Mill, as that mentioned in Senate Bill numbered 4479, entitled "A Bill for Relief of the Rose City Cotton Oil Mill and Others," referred to this court by resolution numbered 448.

Conclusion of Law

The court decides that it appears to the court upon the facts established that under existing laws and provisions of chapter 7 of the Judicial Code the subject matter of the resolution, under which the claim of the plaintiff is before this court, is such that this court has jurisdiction to render judgment thereon. The court therefore decides as a conclusion of law upon the foregoing findings of fact that the plaintiff is not entitled to recover, and that its petition must be and the same is hereby dismissed. It is adjudged and ordered that the United States recover of and from the plaintiff the cost of printing the record in this case, the same to be taxed and collected by the clerk.

Memorandum Opinion

Both parties to the action request the court to find that the plaintiff could have brought its action under existing law, and that the court take jurisdiction under the proviso of section 151 of the Judicial Code and render judgment in this case. The court, being of [fol. 109] opinion that upon the facts established the subject matter of the resolution under which the claim was referred to this court is such that it has jurisdiction to render judgment, has done so.

The facts are fully set out in the findings. The plaintiff asserts that the execution by it of the settlement contract was an act done under compulsion and coercion, and can not be deemed in law a voluntary act. In other words, the plaintiff charges that the new agreement of December 31, 1918, was executed against its wishes and under the pressure of financial necessity. It now seeks to enforce its rights under the original contract of September 26, 1918, upon the ground that the last contract was executed under circumstances which amounted, in law, to duress. The facts show that soon after the armistice was signed on November 11, 1918, between the United States and Germany, negotiations were begun between the parties with regard to the contract which the plaintiff had with the United States as to the purchase of linters. These negotiations extended

over a period of some weeks, and they were culminated by the parties executing the settlement agreement of December 31, 1918. The Government, on its side, announced to the plaintiff that it would exercise its right of cancellation, which right was provided for in the contract, unless the plaintiff would accept the terms offered it by the Government. The new contract proposed by the Government contained stipulations essentially different from those in the original contract. The plaintiff, with full knowledge of its legal rights executed the settlement contract and received the amount in full which the Government agreed to pay. It is true that the plaintiff protested against signing the contract, and asserted that it signed it only because it was under the pressure of financial necessity. It signed because it believed that the terms proposed by the Government were the best it could get, and it required money for the conduct of its business, and feared financial disaster if it should refuse to sign. But there was no duress in the legal sense of the word. The plaintiff signed the contract because it believed that it was making the best settlement then obtainable. The officers of the Government had no power to force them. These officers made an offer; they said to the plaintiff, take it or leave it; if you do not take it, we will cancel the contract and you can get your rights and pursue your remedies in the courts. The Government had the right to cancel the contracts, and the plaintiff preferred to waive its rights under the original contract and to execute the settlement contract rather than to go into the courts to assert its rights. The plaintiff exercised its discretion and voluntarily signed the settlement contract. If the plaintiff was intending to rely upon the law, it should have turned down the proposition of the Government and should have then applied to the courts for redress against the action of the Government in canceling the contract.

It is true that in the negotiations leading up to the final settlement it was contended by the plaintiff that the Government had no right to cancel the contract because, as the plaintiff insisted, the armistice was not a termination of the war within the meaning of the contract. It is not material to a decision of this case whether it was or not, for when the plaintiff executed the settlement contract it waived that question, together with all others which might have [fol. 110] arisen if it had brought suit upon the cancellation of the original contract.

The Government did cancel the contract by its telegram of December 30, 1918, and the plaintiff could then have pursued its remedies, if it had any, in the courts. Instead of doing that the plaintiff with full knowledge of all the circumstances executed the settlement contract, received the full amount from the Government which the contract provided, and it is now asking that the settlement contract be set aside and that it may now have the right to pursue its remedies under the original contract. In bald terms the plaintiff takes the position that it can take the benefit of the settlement contract, repudiate it, and demand its rights under the original contract and have them enforced. Such a position is not tenable.

The plaintiff's case may be a hard one, but this court possesses no dispensing powers; it can not inquire whether the parties have acted wisely or rashly in respect to any stipulation they may have thought proper to introduce into their agreements. If they are competent to contract within the prudential rules the law has fixed as to parties, and there has been no fraud, circumvention, or illegality in the case, the court is bound to enforce the agreement.

In this case the settlement contract must be enforced; the plaintiff should not have executed it if it thought that by so doing it was depriving itself of its rights under the original contract.

[fol. 111] V. JUDGMENT—May 11, 1925

At a Court of Claims held in the City of Washington on the 11th day of May, A. D., 1925, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendant, and do order and adjudge that the plaintiff, as aforesaid, is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed: And it is further ordered and adjudged that the United States shall have and recover of and from the plaintiff, as aforesaid, the sum of Six hundred and seventy-four dollars and six cents ($674.06), the cost of printing the record in this court, to be collected by the Clerk, as provided by law.

By the Court.

VI. PETITION FOR APPEAL—Filed July 10, 1925

From the judgment rendered May 11th, 1925, in the above entitled case, the Petitioner, by its Attorneys of Record, on this 10th day of July, 1925, makes application for and gives notice of an appeal to the Supreme Court of the United States.

Benet, Shand & McGowan, Attorneys of Record. Ellis, Harrison, Ferguson & Gary, Don F. Reed, of Counsel.

ORDER ALLOWING APPEAL—July 14, 1925

Ordered: That the above application for appeal be allowed as prayed for.

Edw. K. Campbell, Chief Justice.

[fol. 112] In Court of Claims of the United States

[Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and memorandum by the court; of the judgment of the court; of the plaintiff's application for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City, this 15th day of July, A. D., 1925.

F. C. Kleinschmidt, Assistant Clerk Court of Claims.
(Seal of Court of Claims.)

[fol. 113] In Supreme Court of the United States

Statement of Points to be Relied upon and Designation by Appellant of Parts of Record to be Printed—Filed Aug. 4, 1925

The Clerk will please print the record in this case, consisting of approximately 112 printed pages, and containing:

1. Index,
2. Petition,
3. Exhibits to Petition,
4. General Traverse,
5. Statement of Argument and Submission,
6. Findings of Fact,
7. Conclusions of Law,
8. Memorandum of the Court,
9. Judgment,
10. Plaintiff's Application for Appeal,
11. Order Allowing Appeal,
12. Certificate of Clerk.

Benet, Shand & McGowan, Attorneys for Appellant. Don F. Reed.

912 Palmetto Building, Columbia, S. C.

[fol. 114] Points Relied Upon

1. The appellant, Hartsville Oil Mill of Hartsville, South Carolina, on September 26th, 1918 executed a written contract with the Government of the United States for the sale of the entire produc-

tion of cotton linters for the season 1918-1919 for the use by the government in the manufacture of explosives used in the prosecution of the war. At that time appellant and all other cotton seed oil mills in the south were subject to governmental control and price-fixing, partly by orders of the War Industries Board and partly by orders of the Food Administration. The price-fixing applied not alone to the purchase of raw material, cotton seed, from which linters are made, but to the sale of all the products of cotton seed, its manufacture and the profit allowed thereon. This control continued until May 31, 1919 under license and penalties prescribed by the Food Administration, and a part of this control was the requirement that the appellant and the other cotton seed oil mills should pay $70.00 basis per ton for every ton of seed offered for sale by the farmers of the south during the entire season beginning August 1, 1918 and ending July 31, 1919.

Under this contract the government was obligated to take all linters produced from August 1, 1918 to July 31, 1919 at the price fixed by the Food Administration and the War Industries Board, and the appellant was not allowed to sell linters at any price to anyone except the United States Government. When the armistice was signed on November 11, 1918, and while the contract was in [fol. 115] full operation, officials of the government, acting under a mistaken and arbitrary interpretation of the legal rights of the government under said contract, insisted that appellant accept a modification of the original contract by which the government would take a part only of the linters agreed to be taken, and in addition would be relieved from further liability upon the entire obligation. Coupled with and as a part of the said offer the officials of the government threatened an immediate, arbitrary and illegal breach of the entire contract if the appellant did not yield and consent to the modification. The appellant at that time, not alone had on hand large amounts of cotton seed linters made in compliance with the contract, and from seed for which the stabilization price as fixed by the War Industries Board and the Food Administration had been paid, and which had been inspected and tagged by agents of the government but not paid for, but relying on the contract and the stabilization scheme of the Food Administration, appellant had made large commitments to farmers and seed buyers for the crop grown but not then marketed which it could not avoid, and on the strength of the contract had incurred heavy financial obligations to banks which it could not meet if the contract with the government were canceled and the stabilization scheme should fail.

The appellant contends that the stabilization scheme would have failed immediately, and that the appellant and the other cotton seed oil mills would have suffered terrific financial losses which they [fol. 116] could not have sustained if the threat to breach the contract had been carried out by the United States Government; and further contends that the agreement under such facts and circumstances to accept the modification of the contract and the subsequent execution of the modification when reduced to writing, both being occasioned solely by the threatened breach and illegal act on the part of the

officials of the government and for which no consideration passed to appellant, was not a voluntary act on its part and is therefore not a bar to recovery by appellant for its expenses and losses resulting from the failure of the government to carry out its original contract.

2. It is inconsistent with the modern theory of duress to assert, as an infallible rule, that the threatened repudiation of contractual obligations made by officers of the government cannot amount to duress.

3. Appellant repudiated the modified contract and brought its action before the War Contract Board of Adjustment prior to the receipt by it of any payments for linters under the modified contract. At no time has appellant indicated its intention to condone the action of the government officials and abide the consequences of signing the modified contract.

4. The Court of Claims erred in holding that the execution of the modified contract, under the existing facts and circumstances, was not an act done under compulsion and coercion and was not to be deemed in law a voluntary act.

[fol. 117] 5. The Court of Claims erred in holding that it was not material to the determination of the appellant's rights to decide whether or not the cessation of hostilities was a termination of the war.

6. The Court of Claims erred in holding that the government had a right to cancel the contract of September 26, 1918, on December 30, 1918.

7. The Court of Claims erred in holding that the government, on December 30, 1918, offered appellant a cancellation under the terms of the original contract, which holding is in direct conflict with the findings of fact.

8. The Court of Claims erred in holding that the appellant exercised its discretion and voluntarily signed the supplemental contract, which holding is in direct conflict with the findings of fact on the subject of coercion and compulsion under which appellant acted.

9. The Court of Claims erred in holding that under the facts and circumstances of the case there was no duress in the legal sense of the word.

10. The Court of Claims erred in holding that the modified contract, made with the government to terminate the previous binding obligation of the government to take all the linters produced to July 31, 1919, could not be set aside except for fraud, circumvention or illegality.

11. The Court of Claims erred in its opinion in disregarding its findings of fact upon which its opinion purported to be based, in this, to-wit, that the Court found as a fact that the appellant in

agreeing to the modified contract, accepted the same under protest [fol. 118] and preserved its protest, and that the subsequent signing was in pursuance of the acquiescence, under protest, in the demands and threats of officers of the government made at a meeting prior to the signing.

12. The Court of Claims erred in its opinion and conclusions of law in that the opinion and conclusions were not based upon or consistent with the findings of fact.

13. The Court of Claims erred in interpreting the doctrine as enunciated in the cases of Freund vs. U. S., 260 U. S. 60; Hunt vs. U. S., 257 U. S. 125; U. S. vs. Smith, 256 U. S. 11; Ward vs. Love County, 253 U. S. 17; Swift vs. U. S., 111 U. S. 22; Robertson vs. Frank Bros., 132 U. S. 17, and Snyder vs. Rosenbaum, 215 U. S. 261.

14. The Court of Claims erred in its interpretation of section 151 of the Judicial Code, in that the Court did not consider and report to the United States Senate the facts in the case and the amount due the appellant, together with such conclusions as would be sufficient to inform the Senate of the nature and character of the demand, either as a claim legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the appellant.

15. The Court of Claims erred in its interpretation of section 151 of the Judicial Code in that the Court entered judgment dismissing the petition without other or further action.

16. The Court of Claims erred in holding that appellant was not [fols 119 & 120] entitled to recover in the full amount stated in its petition.

Benet, Shand & McGowan, 912 Palmetto Building, Columbia, S. C., Attorneys for Appellant. Don F. Reed. Ellis, Harrison, Ferguson & Gary, Don F. Reed, of Counsel.

Receipt of copy acknowledged. William D. Mitchell, II., Solicitor General, August 4, 1925.

[fol. 121] [File endorsement omitted.]

Endorsed on cover: File No. 31,332. Court of Claims. Term No. 609. Hartsville Oil Mill, appellant, vs. The United States. Filed July 20, 1925. File No. 31,332.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

[redacted]TSVILLE OIL MILL, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

BRIEF OF APPELLANT

CHRISTIE BENET,
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WADE H. ELLIS,
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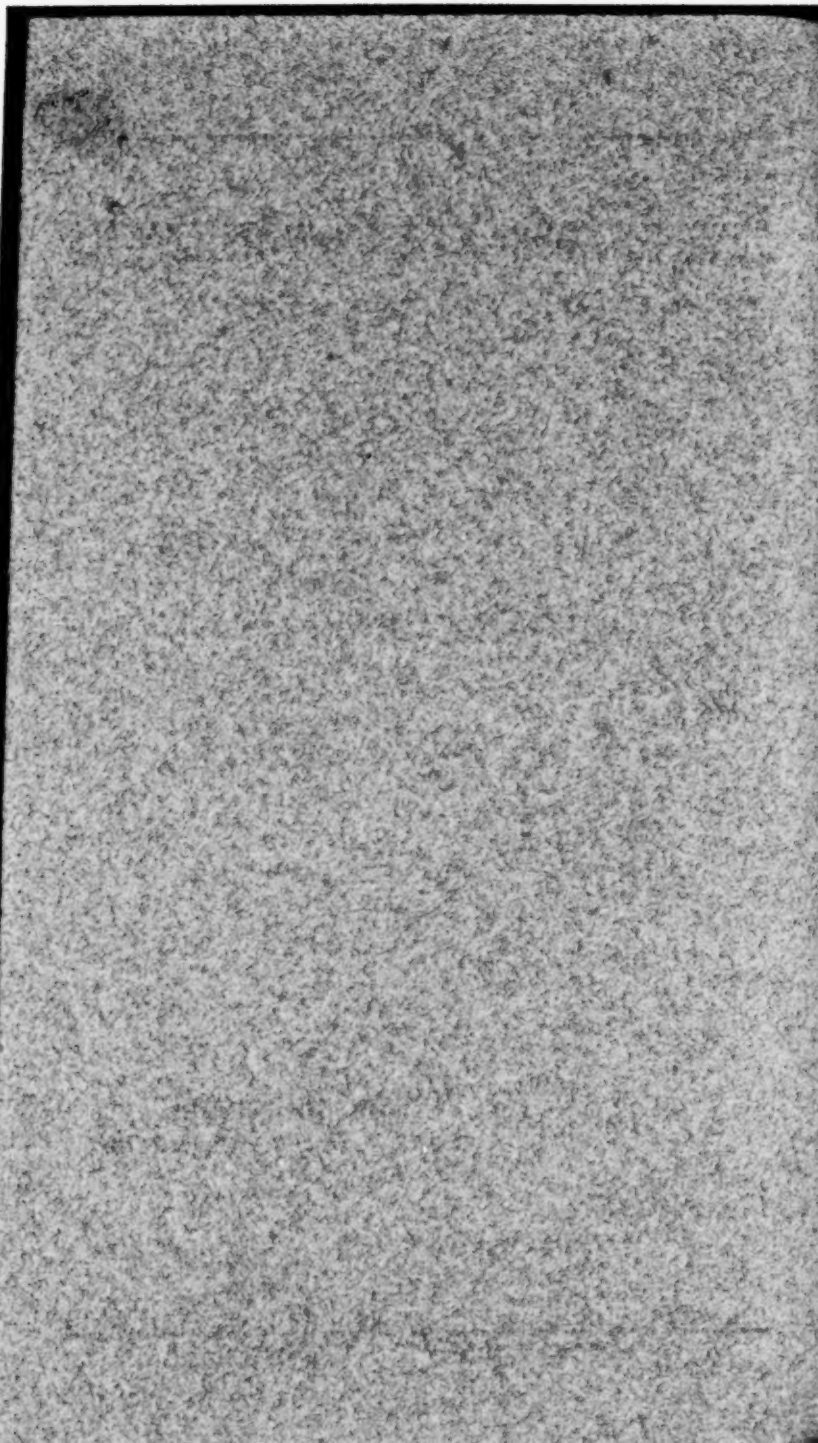

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

BRIEF OF APPELLANT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, *Appellant*,
vs.
THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

BRIEF OF APPELLANT

I

STATEMENT OF FACTS

This is an appeal, under section 242 of the Judicial Code, 36 Stat. L. 1157, from a final judgment of the Court of Claims rendered May 11, 1925, dismissing the claim of this appellant which was for more than Three Thousand Dollars ($3,000.00). The printed reports are not yet available, but the decision is printed in full in the record (R. 64). (id. 60 Ct. Cls. — —.)

The appellant is one of 285 cottonseed oil mills (called hereinafter mills) whose claims arose out of a contract entered into with the government of the United States in 1918 for the production of cotton lin-

ters (the basis of nitro-cellulose) and their sale to the United States, during the years 1918 and 1919. Linters are the short ends of staple cotton which adhere to the seed after the lint is taken off for the manufacture of cloth. They are recognized as the best known basis for high explosives. The claims were presented to the Board of Contract Adjustment of the War Department (cases No. C 150-850) under the provisions of the Dent Act (40 Stat. L. 1272, Fed. Stat. Ann. Supp. 1919, page 304), and appeal was taken to the Secretary of War, as in said Act provided, from a decision of the Board denying relief. (R. 63.) The Secretary of War affirmed the action of the Board on May 18, 1920. (R. 63.) The opinions of the Board of Contract Adjustment and the Secretary of War are found in Decisions of War Department Board of Contract Adjustment, vol. II, page 314, and Vol. V, page 525, respectively.

On March 3rd, 1923, the claims of appellant and 284 other claimants were referred to the Court of Claims by the United States Senate under the provisions of section 151 of the Judicial Code. (R. 21, 30.) The case of appellant was tried in that Court, argued, and appeal taken to this Court from a decision dismissing the petition, dated May 11th, 1925. (R. 66.) By stipulation, the cases of the other 284 claimants filed and pending in the Court of Claims under this reference of the Senate are to be settled by the decision of this case.

In the Spring of 1918 all cottonseed oil mills of the United States were placed under the direct control of the United States Food Administration and the War Industries Board. This control was absolute and com-

plete, and was brought about by two factors. The first was the action of the War Industries Board in fixing the price of all linters on hand on May 2nd, 1918, and to be produced thereafter during the period ending July 31, 1919, at $.0467 per pound, f. o. b. points of location or production, and at the same time requiring that all mills should thereafter produce a minimum of 145 pounds of linters per ton of seed crushed, as compared with a normal production of commercial linters in peace times of about 75 pounds of linters per ton of seed.

As a part of said control all mills were required to sell all linters produced during the season 1918-1919 to the duPont American Industries, Inc., sole purchasing agents of the United States, and were not allowed during said entire period to sell any linters to any other person whatsoever. (R. 35.) Appropriate and heavy penalties were provided for the failure, neglect or refusal to obey the orders of the government as to this and other requirements, and no mill could operate without a license of the government. (R. 56.) When 75 pounds or less of linters are produced from a ton of cottonseed, the product is referred to as commercial linters, and when more than 75 pounds of linters are produced from a ton of cottonseed, they are called munition linters. Munition linters of 145 pounds cut have no value for commercial purposes.

The second factor was the action of the Food Administration, whereby the prices of cottonseed, of all the derivative products thereof other than linters (which were controlled by the War Industries Board

as above shown), the gross operating cost to the mills, the maximum freight allowance, and the profit to be made upon each ton of seed crushed during the period from August 1, 1918, to July 31, 1919, were fixed by governmental action. (R. 58, R. 11-pet.) The price as fixed in this scheme actually allowed the mills a profit of slightly more than 3% or $3.00 on an expenditure of $90.50. (R. pet. 11.) Further, an operating license was required for each mill for the continuance of business, which license provided that it would be revoked upon the failure, neglect or refusal of the licensee to comply at all times with all orders, rules and regulations of the Food Administration. (R. 56.)

Under this concerted plan of the governmental agencies as above set forth, all mills were required to pay the farmers $70 per ton (basis) for every ton of cotton seed purchased during the said period ending July 31, 1919, which included all seed produced from the entire cotton crop of the South for the season 1918-1919, and to sell all products derived from the crushing of cottonseed at the prices as fixed by the government. Under this war program the mills were acting only as the operating agents of the government under a plan which required them to finance all operations from their own funds, and which give them a profit on all cottonseed crushed and to be crushed of only $3.00 per ton. (R. 58, R. 11.)

This appellant and each of the mills subsequently received and signed a "Seller's Contract of Sale" (R. 43) which reduced to writing the orders, rules, regulations and understandings theretofore existing, all of which

were fully complied with by this appellant and all mills. By the execution of this contract, the United States was firmly bound to purchase from the mills all linters produced during the period from August 1, 1918, to July 31, 1919. (R. 44.) The said contract contained a cancellation clause, optional only with the government, which provided that the contract could be terminated by the government under the conditions therein stated, but only "in the event of the termination of the present war"—which clause was put into the contract designedly and had a legal meaning at that time which the mills relied upon. (R. 45.) The contract was not terminated or cancelled in accordance with the terms thereof, nor was any settlement ever offered to the mills under the said terms. (R. 60.)

After the armistice November 11th, 1918, and on November 28th, 1918, the government still exercising complete control over the mills, as aforesaid, directed them to discontinue the manufacture of munition linters and to revert to the manufacture of commercial linters, and this appellant and all mills complied with this direction at once. At the same time the government notified all mills that a definite and final arrangemen for discharging the obligations of the United States would be made within a few days. (R. 59.) Numerous conferences were held between the Linter Committee (representing this appellant and the other mills) and officials of the government, the Linter Committee always insisting that the government carry out the plain obligations of its contracts by taking all the linters for the entire season, as it was bound to do.

This insistence was at least in one instance reduced to writing by the Linter Committee, approved by the War Industries Board (acting through Mr. B. M. Baruch, Chairman, and Mr. Geo. R. James, Chief of the Cotton and Cotton Products Section thereof) which had in the first instance fixed the price of $.0467 per pound for munition linters. And it was also approved by the Food Administration. (R. 56, 57, 59.)

The Cotton and Cotton Products Section of the War Industries Board ceased to function and was disbanded on December 21, 1918, and thereafter its activities with respect to linters were taken over by the Ordnance Department of the Army, and the mills so notified. (R. 60.)

On December 30, 1918, the Ordnance Department, acting through General Pierce, notified the mills, through the Linter Committee, that the government would take only the linters then held by the various mills, inspected and tagged (but not paid for) amounting to 270,000 bales, and would take only a part of the linters to be produced between January 1, 1919, and July 31, 1919, (not over 150,000 bales of an estimated production during said period of 350,000 bales), the amount to be taken at July 31, 1919, to be prorated among the mills, and unless the mills accepted this (absolutely an ultimatum, whether so denominated in the findings or not) within one hour, by 7 p. m. of the same night, the United States would breach the contracts of September 26, 1918, and refuse to accept any linters whatever, either theretofore or thereafter produced. (R. 60.)

The situation in the cottonseed industry at that time,

as set forth in the petition and not questioned in the findings of fact, was as follows:—

The mills were under the orders, rules and regulations of the Food Administration and the War Industries Board, operating under license and compelled to pay the prices fixed by the Food Administration for cottonseed, and to sell their derivative products at the fixed prices. (R. 56.) They had on hand 270,000 bales of munition linters which were of no value for commercial purposes, which had been accepted, inspected and tagged by the agents of the government, but not paid for; (R. 16-pet.; 60); they had on hand approximately one million tons of cottonseed which they had purchased at the fixed price of $70.00 per ton (R. 16-pet.); and the farmers held approximately 480,000 tons of such seed, which the mills were obligated to purchase, under the pressure and control of the Food Administration, at a fixed price of $70.00 per ton; (R. 16-pet.); they had on hand derivative products of cottonseed worth many times the value of the linters, which they could not have disposed of without enormous loss unless the stabilization plan of the Food Administration was carried out during the entire crop year ending July 31, 1919. (R. 16, 17-pet.) The record shows that appellant, the Hartsville Oil Mill, was in a proportionate degree confronted with the situation that faced the entire industry.

Standing in the fear of the threat of the Ordnance officials and in the knowledge that refusal to accede to the demands of the Ordnance Department meant ruin for each of the mills and financial chaos in the South

(R. 17-pet.) the mills, having no appeal and not being on equal terms with the government and knowing that on account of the perishable product they were handling they could not wait on the action of the courts, and preserving their protest (R. 60) against the unjust and illegal action of the Ordnance Department, yielded to the demand of the government officials within the hour specified (R. 61) and acceded to the requirement of modification of the "Seller's Contract of Sale." This modification was immediately thereafter put in writing and is the matter here under consideration. This modification, the appellant contends, was procured through compulsion, is not to be deemed a voluntary act, and should in equity be set aside.

Later, on December 31, 1918, this appellant and all other mills were notified by telegram that the "Seller's Contract of Sale" was cancelled, and the duPont American Industries, Inc., sole purchasing agents of the United States were notified in writing on January 2, 1919, to refuse to accept any linters whatever from any mill which declined to execute the modification, above referred to. (R. 61.)

The government subsequently paid for all munition linters produced prior to December 31, 1918, by this appellant and all other mills, but before any linters were taken by the government or paid for, of those produced subsequent to January 1, 1919, and as soon as the governmental pressure was removed and made such action possible, this appellant and all other mills repudiated their modification of the original contract, and brought their action under the Dent Act as afore-

said, for appropriate relief. And at no period during the interim was there any indication whatever by this appellant or any other mill that it waived its protest, condoned the action of the Ordnance officials, or was content to abide the consequences of having executed the modification of contract—(R. 58). The Court of Claims found as a fact that the protest against the action of the government was not only made but (R. 60) was preserved.

In addition to the overwhelming governmental and financial pressure which confronted the mills it was set out in the petition and not questioned or modified by the findings of fact (R. 16 pet.) that the claimant and the other mills were committed and obligated to the farmers of the South and to the United States Food Adminisration to pay $70.00 per ton for each ton of cotton seed purchased during the entire season of 1918-1919, whether it was brought to the market early or late; that the Food Administration had advised the claimants and the other mills that if they failed to pay $70.00 per ton for seed, the Food Administration would no longer maintain the stabilization scheme and that the result thereof would be an enormous loss to the mills on the seed purchased and the products manufactured under said stabilization scheme. The element of good will in the entire industry, with the farmers, bankers and business men of the South was at stake and this fact was well known to and taken advantage of by the officers of the Ordnance Department (R. 16-17 pet.)

II

THE DECISION OF THE COURT OF CLAIMS IS CONTRARY TO THE FINDINGS OF FACT

In dismissing the claim of appellant the Court of Claims, without the citation of an authority, based its decision upon the following grounds:—

> 1. That it was immaterial to a decision of the case whether or not the signing of the armistice of November 11, 1918, constituted a termination of the present war within the terms of the cancellation clause of the contract of September 26, 1918.
>
> 2. That the government had the right on December 30, 1918, to cancel the contract of September 26, 1918, under the terms thereof.
>
> 3. That the appellant voluntarily signed the settlement contract and received the full amount from the government which the said settlement contract provided.
>
> 4. That there was no legal duress.
>
> (R. 65.)

1.

The fact that the appellant had a contract with the government which was in full force and effect, and wholly capable of enforcement at December 30, 1918, is not disputed. The only reason for controversy was the cessation of hostilities, and the interpretation to be placed upon the signing of the armistice of November 11, 1918, as such signing affected this particular contract. Had the use of ammunition been continued,

the appellant would have continued to manufacture munition linters, and the government would have continued to take them at the fixed price, during the contractual period which ended July 31, 1919. (R. 36, 43.)

But the armistice apparently caused the government officials to doubt the expediency of continuing the accumulation of munition linters, which are not commercially valuable, although the armistice was a suspension of hostilities for a period of thirty days only, according to its own terms.

An examination of the linter contracts was therefore made and it was noted that they could be terminated "in the event of the termination of the present war", and in that event only. It therefore became necssary to determine whether or not the contracts were terminable at that time. The Ordnance officers insisted that the war was over, in legal contemplation and that there was consequently no further demand for munition linters. They assumed and maintained this position notwithstanding the decisions of this Court in *Hijo vs. U. S., 194 U. S. 315; The Protector, 12 Wall. 70;* and the decision of the Federal Court in *Commercial Cable Co. vs. Burleson, 225 Fed. 99*, wherein another arm of the government at the same time was insisting that, in view of the fact that the armistice did not constitute a termination of the present war, the President was authorized under his war powers to assume control of the trans-Atlantic cable, and the Federal Court sustained this position.

It was therefore not only material, but essential to a decision in this case, to decide whether or not the armistice created the condition precedent to the can-

cellation of the linter contracts under the terms thereof, for if he war had terminated, the right of cancellation existed, but if the war had not terminated, there was no such right. And it is not sufficient that it should be urged that the Ordnance officers thought that the war had terminated, thus enabling them to cancel the contracts. The fact must be legally established, otherwise any settlement based upon such fact would be of no effect.

The erroneous interpretation and illegal effect of the signing of the armistice applied by the Ordnance officers formed the only basis for the controversy, and the settlement contract which was forced on this appellant and other mills was predicated upon such interpretation and effect. The materiality of a decision on this question is therefore apparent.

2.

The Court of Claims held that the government had the right to cancel the contract of September 26, 1918. (R. 65.) The answer of the appellant is, that the government had the right to breach the contract at any time between September 26, 1918, and July 31, 1919—that same right which any contractor has to breach a contract when he is willing to respond in damages. But there was no right to cancel the contract at December 30, 1918, under the terms of the contract, as insisted upon by the government, because such right had not been included in the provisions of the contract.

There is some further question as to whether or not the government had the right to even breach the contract in the manner in which it threatened to breach it, (R. 60) without certain liability in addition to the actual damages occasioned by the breach. The findings of fact show that there were some five hundred mills situated in sixteen states, engaged in the manufacture of linters. They were given collectively one hour in which to agree to a modified contract or suffer the consequences of the refusal of the government to pay for such munition linters as were then in their hands, amounting to 270,000 bales, and which had been inspected, accepted and tagged, and were then and there the property of the government. There can be no question regarding the lack of fairness on the part of the government in the whole transaction.

We find in the case of *Freund vs. U. S., infra.*, the attitude of this Court in respect to the "questionable fairness of the conduct of the government" cited and approved in *Nelson Co. vs. U. S. 261 U. S. 17*, and it is submitted that the facts in the *Freund case* show no such utter disregard for the rights of the claimants as is apparent in the instant appeal.

3.

The Court of Claims states:

> "It is true that the plaintiff protested against signing the contract—"

And in the same paragraph:—

> "The plaintiff exercised its discretion and voluntarily signed the settlement contract." (R. 65.)

It is difficult to reconcile these two statements, one of which is the very antithesis of the other. And when it is considered that the offer in the form of an ultimatum, the protest, and the acceptance under protest of the terms of the offer, all took place within the space of one hour, and that there were some five hundred mills located in every state in the South involved, the fallacy of contending that each and every mill acted freely and voluntarily is apparent.

The Court further held:—that the appellant,

> "* * * with full knowledge of all the circumstances, executed the settlement contract, received the full amount from the government which the contract provided, and is now asking that the settlement contract be set aside * * *" (R. 65.)

An examination of the record shows that this statement has no foundation in fact, and is in direct contradiction of the record in the case.

When the settlement contract was forced on the appellant and the other mills, the government took the precaution to see that the terms imposed by it on December 30, 1918, should not be avoided by any mill, and it instructed the duPonts, sole purchasing agents for the government, that if any mill declined to agree to the terms imposed, and refused to sign the agreement which embodied those terms, the agents should

refuse to accept from such mill any linters whatsoever, either manufactured or to be manufactured, and the Ordnance Department and the United States would stand behind them. (R. 61.)

This instruction was never rescinded, and it is apparent that while the same was effective, the same measure of coercion, compulsion and restraint that forced the appellant and the other mills to agree to the terms laid down on December 30, 1918, still obtained in full force and effect.

There was never at any time any action on the part of this appellant or any other mill which tended to show that it consented to condone the act of December 30, 1918, and abide the consequences. The terms of the settlement contract were wholly executory until July 31, 1919. Under the provisions of the Dent Act of March 2, 1919 (*40 Stat. L. 1272, Fed. Stat. Ann. Supp. 1919-304*) all claims presented thereunder were to be filed with the proper department before June 30, 1919, and the record shows that the claims of this appellant and all other mills were so filed, based upon the same cause of action as set up herein.

It therefore cannot be seriously contended that this appellant acquiesced in the settlement contract or that it failed to repudiate it and apply for the proper relief within a reasonable time, notwithstanding the continuing duress. The appellant moved with much more celerity than did the plaintiff in the case of *United States vs. Smith, infra.*, involving a like element of compulsion, where the period was five years, and in the case of *Swift Co. vs. U. S., infra.*, the period was eight and

one-half years. There is the further fact that neither this appellant nor any other mill received one cent under the terms of the settlement contract prior to the date that the settlement agreement was repudiated, and during the period from January 1, 1919, to June 30, 1919, the appellant and all other mills preserved their protest, as was specifically found by the Court of Claims (R. 60).

4.

The Court of Claims held that there was no duress in the legal sense of the word. This follows as a necessary conclusion from their statements in the opinion. The findings of fact, however, show that all the elements of duress were present. Finding No. XVIII (R. 60) shows that the officials of the government told the appellant and the other mills that if they did not accept the terms laid down by the Ordnance officers within one hour from the time of the offer or ultimatum, then the government would breach the contract of September 26, 1918, and refuse to accept any linters whatever, either cut or uncut, leaving in the hands of the appellant and the other mills more than six million dollars worth of product not paid for and useless and unsalable for any other purpose, although the government had theretofore accepted such product. Finding No. XX (R. 61) shows further that there was to be no temporizing or evading of the terms laid down by the Ordnance officers—they were not given to idle threats—for the duPonts on January 2, 1919, were specifically instructed in writing to carry into effect the verbal threats of December 30, 1918.

The statements appearing in the opinion of the Court of Claims do not square with either the law or the facts of this case, taken as a whole. In brief, this appellant, on December 30, 1918, had a valid and existing contract with the government which was effective until July 31, 1919. The officers of the government, in their zeal for its interests and probably without malicious intent, conceived the purpose of saving the government from what appeared to be a loss upon linters. They accordingly engendered a dispute and brought before them this appellant and other mill representatives who were forced by their acts to assume the position of suppliants for justice, and unfolded to them a plan which was born of an incorrect and illegal interpretation of the contract rights, and based upon a false premise. This plan finally matured in the so-called settlement contract, which shows on its face that it was wholly unilateral (R. 51, fol. 94) and this settlement contract was forced on this appellant and the other mills against their will, over their protest, and under conditions constituting compulsion, squarely within the principles recognized in *Freund vs. U. S. 260 U. S. 60*, hereinafter set forth and discussed.

The Court of Claims suggests that the case of appellant may be a hard one, but that it possesses no dispensing powers. The appellant is not before this Court seeking the exercise of any dispensing powers not possessed by this Court, but rather to obtain that simple justice and to ask for that standard of honesty and fair-dealing that should always characterize the deal-

ings between this government and its citizens.

The final view of the Court of Claims in its opinion is expressed in the following language:—

> "The plaintiff's case may be a hard one but this court possesses no dispensing powers; it cannot inquire whether the parties have acted wisely or rashly in respect to any stipulation they may have thought proper to introduce into their agreements. If they are competent to contract within the prudential rules the law has fixed as to parties, *and there has been no fraud, circumvention, or illegality in the case*, the Court is bound to enforce the agreement." (R. 66.) (Italics ours.)

There are two thoughts that immediately suggest themselves by this statement. The first is, the definite announcement of the rule that, although the appellant's case may be a hard one—which of itself suggests that it is a case of real injustice—no relief whatever may be granted unless there has been "fraud, circumvention, or illegality." No such rule, restricting relief in equity, has ever before been laid down by this or any other Court so far as we know. In the numerous decisions of this Court, which will hereinafter be referred to, such as the *Smith case*, this Court has repeatedly held that in dealings between the government and a private contractor, where the contractor has been forced to proceed under a false and illegal interpretation of the rights of the government made by government officials, and he has proceeded, though

under protest, under circumstances of compulsion, coercion, restraint, or whatever name may be applied to the situation, the Court is justified in setting aside the contract as so interpreted. Further, these cases hold that the contractor is entitled to proceed in the proper Courts to assert his rights under the original contract, notwithstanding he proceeded with the new contract forced upon him by officials of the government, he having preserved his protest.

In such cases there is no charge of fraud, which would have to be distinctly and clearly alleged and proved; there is no charge of circumvention, which is but another name for fraud—"the act of prevailing over another by fraud or artifice"—(Webster's definition), and there is no charge of illegality to be sustained, in order to assert rights which have been modified and denied by the compulsion of the government.

The rule laid down by the Court of Claims in this case is contrary to what must now be regarded as the settled principles relating to the rights of those having contracts with the government.

It is apparent that the Court of Claims rested its decision in this case on the proposition that a contractor with the government, who has been compelled to proceed under a modification of his contract and at the insistence of the government upon its misinterpretation of the legal rights of the parties, may have no relief whatever unless he can substantiate a charge of fraud against officers of the government, and show that their acts were contrary to the statutes or illegal in some other sense. We respectfully submit that this view is

fundamentally unsound, has no support and is denied in the cases decided in this Court.

It is possible to demonstrate readily the unsoundness of this view of the Court of Claims. If the appellant does convict the officers of the government of fraud, it is doubtful whether he could maintain his case at all in the Court of Claims, for he would have a tort action which is not cognizable by that Court. *Livingston vs. U. S. (1925) 60 Ct. Cls.*, — —.

To say that no relief can be granted under circumstances, other than fraud, circumvention or illegality is denying the power of the Court of Claims ever to set aside a contract on equitable grounds—a power which that Court has repeatedly exercised, and a power which has also been exercised by this Court in many cases hereinafter referred to.

Second, the comment of the Court of Claims that it does not possess dispensing powers where there is a hard case and no fraud, suggests the question why the Court completely ignored the reference of this case to the Court of Claims by Congress, with direction to determine and report to Congress "the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States—" (Sec. 151 Judicial Code, 36 Stat. L. 1138, 5 Fed. Stat. Ann. 655.) The only action of the Court was dismissal of the petition and the entry of a judgment against the claimant for costs. (R. 64.)

III

THE POSITION OF THE GOVERNMENT

It is desirable next to consider the position of government counsel before the Court of Claims, which it may be assumed will be the position taken by the government in this Court.

The government denies the right of the appellant to recover on the following grounds:—

1. The settlement contract was fully carried out.
2. The signing of the armistice on November 11, 1918, was a termination of the war within the meaning of the cancellation clause of the contract of September 26, 1918.
3. The terms and conditions of the settlement contract were consented to and agreed upon by both parties.
4. The appellant was guilty of laches.
5. The appellant agreed to and signed the settlement contract because of financial and economic necessity.
6. The consideration for the settlement contract was the settlement of disputes existing at the time of signing.

1.

It should be borne in mind that the settlement contract was wholly executory until July 31, 1919, at which time the government undertook to take up and pay for certain linters which would be manufactured

between January 1, 1919, and July 31, 1919. (R. 52.) The settlement contract also provided that the government should take up and pay for the 270,000 bales of munition linters, which were in the hands of the mills on December 31, 1918. There was manifestly no consideration for this apparent concession—it was no more than an acknowledgment on the part of the government of its failure to perform the terms of the contract of September 26, 1918. This six million dollars worth of lint was the property of the government on that date, and the Ordnance officials threatened to refuse to pay for these munition linters already manufactured under government regulations, or to take and pay for any linters whatsoever.

The government did nothing prior to July 31, 1919, under the settlement contract which it was not obligated fully to do under the original contract and during the preceding month of June this appellant took the most effective steps to set the settlement contract aside. Whatever action the government took after June 29, 1919, the date the claims of the mills were filed with the Board of Contract Adjustment, was taken with full knowledge of the position assumed by the mills in regard to the modified contract.

2.

The government contends further that the signing of the armistice of November 11, 1918, was a termination of the war within the meaning of the cancellation clause, and argues from this premise that the position assumed and maintained by the Ordnance officers on December 30, 1918, was legally sound.

This contention cannot be seriously considered, for the law was well settled on the subject at that date. (*Hijo vs. U. S., 194 U. S. 315; The Protector, 12 Wall. 70; Commercial Cable Co. vs. Burleson, 225 Fed. 99.*) But it is urged that these authorities have been nullified and set aside by the case of *Duesenburg Motor Corp. vs. U. S., 260 U. S. 119*, in which it is said:—

> "The government might terminate the contract in the interest of the public welfare; and the war might cease. The latter did happen."

This case was decided in 1922, and it was a matter of common knowledge *in 1922* that the war was suspended on November 11, 1918, and was never resumed. This Court did not say *that* the war ended on November 11, 1918, and that the fact was known at that time.

It is further contended that the statement of President Wilson before both houses of Congress, on November 11, 1918, is authority on the subject of the termination of the war within the contemplation of these contracting parties. In his speech on that date he said, in dramatic manner:—

> "The war thus comes to an end", and
> "We know only that this tragical war * * * is at an end."
> (Congressional Record of November 11, 1918.)

The armistice was, by its own terms a cessation of hostilities for a period of thirty days. It may have been believed that the armies of Germany and its allies in the war had been rendered impotent to continue the

struggle, but at the very time the President was giving utterance to the words above quoted, it was being asserted in the Federal Court in the *Commercial Cable case, supra,* that the President had the authority to take possession and control of the trans-Atlantic cable under his war powers, *because the war had not ended.* And the court held in the Cable case that he had the power because the war had not ended. In any event the statement of the President could not alter the legal fact. It is not alleged or contended that the contracting officers of the government had any knowledge of this statement, but they were presumed to know the law on the subject. And even had they known and relied upon the statement of the President, this would have given them no authority to brush aside the legal status and assume a position which enabled them to cancel, breach, terminate or remold contract at will to the injury of the contracting party.

3.

Another contention of the government is that there was a ratification of the settlement agreement by the appellant and the other mills. This contention has no basis in fact, as has been heretofore shown. Instead of ratification, there was a distinct and formal repudiation of this agreement by the filing of claims with the Board of Contract Adjustment.

The Court of Claims sets out in its findings of fact a memorandum signed by two officers of the government and by Senator Benet, counsel of the mills, on January 2, 1919, and construes this to be a ratification of the settlement contract. (R. 63.)

This memorandum means just what it says, and it cannot be tortured into a ratification of the settlement contract by any of the signers to the memorandum. It was signed by all parties in view of the fact that Mr. Baruch and Mr. James of the War Industries Board, whose attitude regarding the settlement contract was desired, were absent from the city. The statement reads, that each of the signators was of the opinion that, had Mr. Baruch and Mr. James been present, they would have ratified the settlement agreement. It was simply an expression of opinion on the part of each signer of what he believed to be the attitude of mind of Mr. Baruch and Mr. James; and it is not unreasonable to believe that had either Mr. Baruch or Mr. James been present, they might have refused to give their consent to the terms of the agreement.

In any event neither Mr. Baruch nor Mr. James represented the mills—their interests were on the side of the government. The only reason for the memorandum at all was the desire on the part of the Assistant Secretary of War to have the approval of Mr. Baruch and Mr. James as a matter of courtesy. The War Industries Board had officially ceased to function three days prior to January 2, the date of the memorandum (R. 15) and actually had closed on December 21, 1918, so far as cottonseed products were concerned. The approval of these gentlemen was a mere gesture at the most.

It should be remembered that on January 2nd, 1919, this appellant and all other mills were in the same position that they occupied on December 30, 1918, except that the government had taken measures to see that

none of the mills should refuse to execute the agreement which embodied the terms of the ultimatum of December 30, 1918. On December 31, 1918, each mill received from the Government a telegram cancelling the contract of September 26, 1918. The government on January 2, 1919, instructed the duPonts in writing to refuse to accept any linters from any mill that refused to abide the terms of the settlement agreement, which had been forced on the mills by General Pierce on December 30, 1918. (R. 61.)

4.

The government relies further on the allegation that the appellant and the other mills were guilty of laches, and for that reason should not prevail. See the opinion in this respect. (R. 64.)

It has been heretofore shown that this contention cannot be seriously considered. There were some five hundred mills which were affected by the action of the Ordnance officials, all operating at December 30, 1918, under a uniform contract. Action was taken within a period of six months after that date, which would seem to be a reasonable time, in view of the fact that the claimants were located throughout sixteen states. The Court of Claims found that there was no laches. (R. 64.)

Attention is directed to the length of time elapsed in other cases of this nature, for a comparison. In the *Freund case, infra*, the contractor operated under an erroneous construction of the contract for a period of sixteen months, and there was but one contractor;

in the *Smith case, infra*, the period of elapsed time was five years, and in the *Swift case, infra*, the period of time was eight and one-half years.

5.

The government contends further that the settlement contract was agreed to because of the financial and economic necessity of the appellant and the other mills.

It is true that the appellant and the other mills needed funds for the continuance of their business, and feared financial disaster should they refuse to accept the terms laid down by the Ordnance officers. It is also true, as has been heretofore shown, that the appellant and the other mills did not have full and complete control of their respective plants—they were controlled by the War Industries Board and the Food Administration as effectively at December 30, 1918, as they had been during all the year 1918.

The primary cause of this need for funds was the total failure on the part of the government to pay for the linters produced under the contract of September 26, 1918, with any degree of promptness, with the result that the mills had on hand more than six million dollars worth of unsalable product which belonged to the government and had not been paid for. This naturally threatened the mills with financial disaster and at the same time tended to create a lack of confidence in the financial situation of the entire South with respect to the cotton seed oil industry and banks and farmers upon which they were dependent. In short, the government had and was withholding more than

six million dollars, which was the property of the mills, at December 30, 1918, and had this money been in the hands of this appellant and the other mills, the alleged financial pressure would not have existed to the extent that it did.

As far as the mills were concerned, the sole reason for agreeing to the terms of the settlement contract was the fact that the government had said to this appellant and the other mills, "If you do not agree to the terms we offer, we will not pay the six million dollars we owe, and further, we will not pay for the 330,000 bales of linters which you will produce between now and July 31, 1919." This was the financial necessity and economic pressure upon the mills, which was calculated to and did overcome their minds, and robbed them of their freedom of action. (R. 60.) And this does not take into account the moral obligation of the mills to the Food Administration and the farmers.

There is the further suggestion that counsel for the mills assisted in the preparation of par. 8 of the letter of the Ordnance Department to the duPonts authorizing the duPonts to refuse to accept from any mill any linters whatever, if it failed to execute the modified contract. (R. 61.)

This suggestion is fallacious, and the absurdity of the contention is readily apparent. In this paragraph 8 the United States undertook to indemnify the duPonts against any damages they might suffer, by reason of refusing to accept any linters whatever from any mill which declined to execute the modified contract.

If we apply this suggestion to the situation of the appellant, we would have the appellant agreeing that the government should indemnify the duPonts, for their refusal to take any linters from the appellant —a reductio ad absurdum.

This paragraph was inserted in this letter at the sole instance of the duPonts, to insure themselves— nor did the mills have anything to do with it, for they had no interest in the relations between the duPonts and the government.

It is the fair construction to be placed on this paragraph to say that the government, as well as the duPonts, fully realized that the obligation of the government was to take all linters produced by the mills until July 31, 1919. In order to avoid any liability for refusing to take up the linters, the duPonts asked the government to save them harmless and this the government agreed to do. The appellant was not only not a party to this underwriting but had no interest whatsoever in the matter.

6.

The sixth and last contention of the government is, that the government was released by the settlement agreement, from its obligations under the original contract, the consideration of the settlement agreement being the settlement of disputes existing between the contracting parties.

This contention cannot be maintained, as an examination of the preamble of the modified contract shows on its face that it is wholly unilateral. It first recites that disputes have arisen between the Buyer and the Seller, and states:—(R. 51, fol. 94.)

> "Whereas, it is for the best interests of the United States to arrange for a settlement of said disputes by a modification of said contract, under which modification the Buyer will be required to receive and pay for a less quantity of linters than is provided by the terms of the contract aforesaid."

It may be pertinent at this point to inquire, Who engendered the disputes? If the government did so, should it now be permitted to take advantage of the disputes for which it is alone responsible?

The appellant and the other mills questioned the legality of the basis upon which the right to cancel the contract was founded. The government simply said we will do so much and no more, which is less than we are now obligated to do (as this preamble to the modified agreement shows); we will give you, five hundred mills in all, one hour to make up your minds; and if you do not accept the terms which we offer, we will do nothing. This position was assumed and maintained, no alternative was offered, and in the words of General Pierce, spokesman for the government, "you can take it or leave it." This is the settlement of the disputes upon which this contention is based.

The government stresses the case of *Silliman vs. U. S. (1880) 101 U. S. 465*, but the case has no application here. The question in that case was, Was there sufficient evidence or proof of duress to entitle the claimants to recover? The Court answered in the negative.

The claimants were the owners of certain barges which were operated in and around New York. Early

in 1863 they entered into charter-parties with a contracting officer of the government for the hire of the barges at a fixed rate, and were regularly paid the agreed rate until November 1, 1863.

On June 2, 1863, the charter-parties being in full force and effect, the Quartermaster General ruled that no more barges should be chartered at a rate to exceed $4.00 per ton per month, registered tonnage. The contract rate of claimants exceeded this rate. The claimants were notified of this ruling, and replied that they preferred to have their barges returned than to let them at the proposed rate.

The barges remained in service, however, and nothing was done until December 10, 1863, when the contracting officer was notified that he must take steps to bring all barges under his control within the contract rate, and cause the owners to execute new charter-parties at the reduced rate, *such rate to be effective as of April 1, 1863.* On December 14, 1863, the claimants were notified of this proposal. They had before them, since June 2, the proposed form of charter-party which they had declined to execute, and they had received their regular monthly hire at the rate stated in the original charter-party. They were also notified that their barges would be retained in service, and no further payments would be made them, unless and until the new form of charter-party (effective April 1, 1863, as to the rate of hire) was executed. The claimants declined, and demanded the return of their barges, which demand was refused.

On January 8, 1864, the claimants complained to

the Secretary of War, stating the refusal of the government either to return their barges or pay them hire for November and December, 1863, and stated that they desired to sell the barges because they required money to pay their crews. Thereafter, after certain offers and counter-offers and with mutual concessions, the new form of charter-party was executed on May 16, 1864, and the effective date as to hire was made November 1, 1863, rather than April 1, 1863, as formerly proposed. And during all the period from November 1, 1863, to May 16, 1864, their barges remained in service and there was nothing to show that the crews were not paid, nor that the claimants had any difficulty in obtaining money for the payment of the crews.

Here there were concessions and a compromise on both sides—the government extended the effective date of the new charter-party for a period of seven months, and gave up a claim against the owners for seven months' excessive hire, and the claimants, in consideration thereof, agreed to and did execute the new charter-parties. On the question of duress there is but the statement, and no proof, that the claimants needed money for the conduct of their business, and they could not have been in any dire necessity, from the fact that they operated the barges from November 1, 1863, until after May 16, 1864, without receiving any money for the use of the barges, and without protest, and in fact there was no indication that what was finally done was done under protest at all. This, in the light of the best considered cases, is sufficient to dispose of the action.

The claimants subsequently sued for the difference between the rate named in the original charter-party and the rate under the new charter-party, and for certain damages. Mr. Justice Harlan delivered the opinion of this Court, saying:

> "They yielded to the threat or demand of the department solely because they required, or *supposed they required* money for the conduct of their business or to meet their pecuniary obligations to others."
>
> "There is present no element of duress, in the legal acceptation of that term."

Some 45 years have passed since that decision, and it is submitted that the principles relating to legal duress have undergone a change during that period of time. Further, an examination of the decisions of this Court shows that the *Silliman case* has been cited as authority but once, so far as we can find, and that citation is in support of a statement that the allegation of duress could not be substantiated for lack of evidence or proof.

In the case of *Coppage vs. Kansas, 236 U. S. 9* (1915), a Kansas statute provided a penalty for any employer or his agent who should compel any employe to withdraw from a labor union as a condition of continued employment. One Hedges was a member of the Switchmen's Union and an employe of the Frisco railroad at Fort Scott, Kansas, of which Coppage was the local superintendent.

Coppage presented a statement to Hedges to be signed stating that he withdrew from the Union.

Hedges refused to sign, and was thereupon discharged. He invoked the statute and Coppage was convicted.

This Court reversed the Supreme Court of Kansas, and as to the allegation of duress, said:

> "But aside from the matter of pecuniary interest" (a $1,500 insurance policy in the Union) "there is nothing to show that Hedges was subjected to the least pressure or influence, or that he was not a free agent, in all respects competent, and at liberty to choose what was best from the standpoint of his own interests."
>
> *(Citing Silliman vs. U. S., Supra.)*

This case establishes what this court believes to have been decided by the *Silliman case*—not the applicable principle of legal duress, but the failure to establish the very elements which constitute duress. It is therefore, we submit, apparent that the *Silliman case* has no application to this appeal.

IV

THE POSITION OF APPELLANT

The appellant claims and contends:

1. The condition under which the modified agreement was executed show that the situation was one of compulsion and coercion, under circumstances where the parties were not dealing on equal terms.
2. The execution of the modified contract therefore does not relieve the United States from the obligations of the contract of September 26, 1918.

1

The situation of appellant and the other mills, at December 30, 1918, as heretofore set forth, is essential to a proper consideration of this case. It is sufficient to point out that at that date the contract of September 26, 1918, was neither disputed nor was it disputable. The contract provided that the government should take all linters produced during the crop year ending July 31, 1919, at the price which the government had fixed, except "in the event of the termination of the present war." This situation had not come to pass, and there was no clause in the contract which made cancellation optional at any time with the government. (R. 45.)

The Ordnance officials conceived the plan for the cancellation of this contract, not because it was ter-

minable under its terms, but because they insisted that in view of the arimistice, there was no further demand for munition linters for the manufacture of gunpowder. They therefore contended that the war had terminated within the meaning of the cancellation clause, contrary to the law as well established, and knowing the situation of the appellant and all other mills in the industry at that time, compelled the acceptance of the modified contract which embodied only such terms as the Ordnance officers saw fit to grant. (R. 60.) The offer of the Ordnance officials was made with full knowledge on the part of the said officers that the appellant and the other mills could not refuse to accept, and the modified contract was the result of compulsion, coercion, and restraint upon the freedom of action of this appellant and the other mills.

There was no freedom of action possible on the part of the mills. They were faced with the situation heretofore set forth, and were precluded from refusing *any* offer by the government, even had that offer embodied much less than the terms of the modified contract. The Ordnance officers stated no alternative, and no compromise was suggested; General Pierce as spokesman for the government simply said, "So far as I am concerned, the war is over, and the government is not going to take any more linters." This appellant and the other representatives of the mills were impressed with his firmness and knew that he had all the power of the government behind him. To paraphrase the language of this Court in the case of the *United States vs. Smith, infra*, the view of the contract enter-

tained by General Pierce made evident the uselessness of soliciting or expecting any change from him; his conduct was repellant of appeal, or any alternative but submission, with its consequences.

The Board of Contract Adjustment denied relief to this appellant and the other mills holding there was no restraint of the person or actual withholding of tangible property—applying the doctrines of technical duress between private persons—and concluded that the Secretary of War did not have the authority to adjust or pay the claims of this appellant and the other mills. (Decisions of War Department Board of Contract Adjustment, vol. II, 314.)

The main question in this case is, Is there an obligation on the part of the government, under the principles established by this Court, to reimburse the appellant for losses suffered, notwithstanding its submission to the arbitrary cancellation and modification, its protest thereto having been duly preserved?

Any argument as to the application of the rules of duress obtaining between individuals dealing on equal terms and at arms' length is beside the mark, for here we have a situation of compulsion, coercion and restraint growing out of the relation between the various agencies of the government and citizens with whom it contracted and over whom it had control during the war, and under circumstances of power and control, well known to this Court, where the parties could not be said to be dealing on equal terms. Similar situations have had the consideration of this Court in recent decisions and we find the principles there stated

which afford an answer to the question here under consideration.

Freund vs. United States, 260 U. S. 60

This case grew out of a contract for carrying the mails. The Postoffice Department accepted plaintiff's bid and entered into a contract for service on a particular route for a certain annual gross sum. The contractor was to begin July 1, 1911. The Department, not being ready on that date or for more than a year afterward, substituted another and more burdensome route for the one bid upon, doing this in reliance upon certain clauses in the contract and notice to bidders, which it contended, gave such right of substitution. The contractors protested, but being threatened with cancellation of the contract and suit on their bond if they did not acquiesce in the terms laid down by the Department, submitted to the government's interpretation of the contract, performed the service required on the substituted route, and accepted periodical payments for several months, although the cost of services was many thousand dollars more than they were paid.

The Court of Claims allowed some additional compensation above that which the contractors had received (56 Ct. Cls. 15), and concluded that it was unnecessary to determine whether or not the new route was substituted for the old, because the contractors had acquiesced in this view by performance.

One contention of the government was:

> "Nothing was done by the postmaster at St. Louis nor by the representative of the Post Of-

> fice Department which in any way prevented the appellants from exercising their own judgment and will as to their future course of conduct."

In the instant case we have the identical situation, for the Court of Claims said:

> "The plaintiff exercised its discretion and voluntarily signed the settlement contract." (R. 65.)

And further in the *Freund case*, the government contended:

> "If the contractor, in spite of his assertion as to the illegality of the claim, and irrespective of his protests, nevertheless entered upon the performance of the contract, distinctly understanding the terms proposed by the other party as the only terms upon which performance would be accepted, the law imposes no obligation upon the other party to reimburse the contractor for expenses incurred in excess of those which the other party distinctly stated as the limit of his liability."

In the instant appeal the limit of liability was stated by the government to be less than the actual legal and contractual liability existing at the time, and this liability was stated by the Ordnance officers to be the maximum that could be expected from the government. In addition, the element of time in the two cases deserves consideration. In the *Freund case* several days'

time was allowed the contractor in which to accept or reject the offer of the Department, and there was but one contractor. In this appeal the time allowed for the decision was one hour, and there were more than five hundred contractors located in some sixteen states. (R. 60.)

The issue in the Freund case was squarely raised—was the contractor barred by having accepted the illegal interpretation of the contract by agents of the government and receiving periodical payments, having duly protested? This Court had no difficulty in rejecting the contentions of the government and finding that the contractor was entitled to recover the reasonable value of services for sixteen months, including a fair profit.

In rejecting the government's contention that the contractor had released the government by accepting and acquiescing in the interpretation of the contract made by the Post Office Department, this Court found:

> "That at the time the contract was executed the Department had formed the purpose to thrust on the contractor this burdensome route, but it did not advise them of it until ten days before July 1st, and, indeed, did not give them the exact schedule until the day before they were to begin it. Then the only course open to them was either to engage the old contractor's equipment at a heavy loss, or throw up the original contract and run the risk of the government's reletting at a higher bid and charging the possible heavy difference in cost to it against them on their bond for a five year contract."

The contractors protested and insisted that the performance of the service on the substituted route was not within the terms of their contract, but were advised by an agent of the Department that it was his business to see that they performed, and if they refused, they would be sued on their bond. This Court concluded that, under the circumstances there was no acceptance of the new route which would bar recovery.

The controlling element in the *Freund case*, which is present in the instant case in even greater degree, is expressed by the Court in saying:

> "We cannot ignore the suggestion of duress there was in the situation or the questionable fairness of the conduct of the government, aside from the illegality of the construction of the contract insisted upon."

And

> "But sometimes such contract provisions have been interpreted and enforced by executive officials as if they enabled those officers to remold the contract at will."

There was no discussion of the restraint of person or the withholding of personal property, which element was contended was essential to establish duress as between private persons.

The *Freund case* has been cited with approval in a subsequent decision, *Nelson Co. vs. U. S., 261 U. S. 17*, and its scope in that case has been even more clearly defined.

In the *Nelson Case* there was a contract with the government requiring an amount of lumber to be supplied to the government, with an option on the part of the government to take more. The government, during the term of the contract, took an amount in excess of the quantity named in the contract, at the contract price. The claimant thereafter brought suit for the difference between the contract price and the market price of the excess so supplied:

This Court said:

> "The plaintiff relies on the opinion of this Court in *Freund vs. United States*, 260 U. S. 60. The facts of that case are very different from this. *They involved conduct on the part of representatives of the government of questionable fairness toward the contractors* and showed no such acquiescence and absence of protest as here appear."

Even the minimum of the facts in the case at bar come within this interpretation of the *Freund case.* We think that it is fair to say, after reading the opinion of the Court of Claims and of the Board of Contract Adjustment, that the conduct of General Pierce, who was the executive official in charge of this matter for the government, was one of questionable fairness, to say the least. And we have shown herein that there was no acquiescence, that there was a protest, and a preservation of protest. (Finding XXIV, R. 64.)

This Court in the *Freund case* declined to give judicial sanction to such conduct on the part of officials of

the government, rejected all contentions of the government and held for the contractor.

Hunt vs. United States, 257 U. S. 125

The above case was cited and relied upon by Chief Justice Taft in delivering the opinion in the *Freund case*. The *Hunt case* also applied simple principles of justice between the contractor and the government, and such application required the setting aside of an acceptance, settlement or a receipt made or entered into because of the arbitrary action and interpretation of a contract by officials of the government.

The contractor in the *Hunt case* had a mail contract in the City of Chicago, and was ordered to perform service to and from street cars by the Postmaster General, who insisted that such service was within the terms of the contract. The contractor accepted the ruling under protest, performed the service and receipted for payments. This Court gave the contractor relief, notwithstanding his acquiescence in the erroneous interpretation, his acceptance of payments, etc. His right to recover was assumed, and the principal discussion in the case was on the question whether the contractor would be entitled to recover in view of the fact that service had been performed by a sub-contractor.

This Court held that he could recover, reversed the Court of Claims and remanded the case for further proceedings.

The claimants in the *Freund case* cited and relied upon the above case, which involved the setting aside of the arbitrary interpretation of a contract for dredging, although the contractor acted under such interpretation, performed the service, accepted the payments and gave a receipt, but all under protest.

The appellees had entered into a contract with the army engineers to excavate a ship channel in the Detroit River, the material to be excavated specified to be clay, sand, gravel and bouleers. During the term of the contract Col. Lydecker, in charge of the work, extended the time for completion and ordered the appellees to work at certain designated places. The material to be removed from such places was limestone rock and limestone bedrock.

The appellees protested against removing such material and asked for an extra price for doing the work. Col. Lydecker refused their request, insisted in the face of evidence to the contrary that the material to be removed was clay, sand, gravel and boulders, and informed them that if they declined to proceed, the contract would be taken from them, relet to others, and that they would be charged with the cost of completing the work in the retained percentages and on their bond. Under such threats the appellees did the work accepted the interpretation of the contract as Col. Lydecker had interpreted it, received payments under the terms of the contract, all under protest, and afterwards brought suit to recover the difference between

18c per cubic yard, the contract price for removing the material designated in the contract, and $2.24 per cubic yard, the reasonable cost of removing the limestone rock.

The precise issue in this appeal was raised in that case, i. e., that the contractors had accepted the modification of the contract and were thus barred, and the contention of the government was that the appellee had the option, at the time the overtures were made to Col. Lydecker without success, of either abandoning the work and suing for damages, or proceeding under the contract. Having elected to proceed, the government took the position that they were thus barred from recovery.

To this contention this Court answered:

> "We think the right of the appellees to recover is indisputable."

Here there was no attempt made to delve into the technical rules of duress as between private persons dealing on equal terms—there was no discussion of the fear of bodily harm or the emancipation of personal property. This Court applied the clear and basic rules and principles of equity which the situation and special relation warranted.

In referring in general to the obligations of the claimants which the government insisted were a condition precedent to recovery, or which barred recovery in that case, Mr. Justice McKenna said:

> "The contention overlooks the view of the contract entertained by Colonel Lydecker and the uselessness of soliciting or expecting any

> change from him. His conduct, to use counsel's description, 'though without malice or bad faith in the tortious sense,' was repellant of appeal or of any alternative but submission with its consequences."

This language is particularly pertinent to the case at bar, and with a change of name accurately describes the situation of this appellant:

Ward vs. Love County, 253 U. S. 17, and Swift Co. vs. United States, 111 U. S. 22.

Ward vs. Love County, 253 U. S. 17, (1920) is another instance of the view of this Court in 1920 as to the circumstances under which a contract, receipt or settlement, obtained by governmental authority, should be set aside.

The case related to the recovery of taxes paid because of the necessity of the taxpayer and pressure of the authorities. It is significant in the present discussion not because of the analogy of the facts, but because it states in broad terms and as a principle of general application the rules of the decision in *Swift Co. vs. U. S., 111 U. S. 22*, which was a case setting aside a settlement with the government arising out of contract.

The *Ward case* was an action by Indian claimants to recover certain county taxes paid. The principal question was whether or not the taxes had been paid voluntarily, thus precluding recovery. The record showed that the claimants protested and objected that the taxes were illegal, but that the county authorities insisted on payment under threat of penalties and sale

for non-payment. Mr. Justice VanDevanter answered the contention of the county on no narrow grounds, but based his decision on the broad principles of justice, saying:

> "The moneys thus collected were obtained by coercive means—by compulsion. The county and its officers reasonably could not have regarded it otherwise; much less the Indian Claimants."

What is meant by "coercion" and "compulsion" is shown by reference to the cases cited by Mr. Justice Van Devanter in support of this statement. A case in point is *Swift Co. vs. U. S., 111 U. S. 22*, involving the setting aside of a contract with the government.

In that case the appellant was a manufacturer of matches, and furnished its own dies for the manufacture of internal revenue stamps required upon the sale of its product.

In interpreting the statute, this Court held that the appellant was entilted upon a purchase of over $500 worth of stamps for its own use, to a ten per cent commission payable in *money*.

Extending over a period of eight and one-half years the Bureau of Internal Revenue had ruled that the commission was payable *in additional stamps*, and the appellant accepted all commissions accordingly. On each purchase the appellant had signed a receipt acknowledging the receipt of stamps in satisfaction of its order. Periodically it had acknowledged statements of account rendered by the government to be correct,

complete and true, and in each instance admitted the balance shown to be due, and had subsequently paid the same. At the end of the period it filed a claim with the Bureau for the sum due it, constituting ten per cent upon the aggregate amount of stamps delivered theretofore by way of commissions. The claim was denied and action brought in the Court of Claims. Upon judgment for the government an appeal was taken to this Court.

In reversing the Court of Claims this Court held that the Bureau's attitude was:

> "In effect, to say to the appellant that, unless it complied with the exaction, it should not continue in business. * * * The question is whether the receipts, agreements, accounts and settlements made in pursuance of that demand and necessity, were voluntary in such sense as to preclude the appellant from subsequently insisting on its statutory right."

> "We cannot hesitate to answer that question in the negative. The parties were not on equal terms; the appellant had no choice. The only alternative was to submit to the illegal exaction, or discontinue its business. It was in the power of the officers of the law and could only do as they required."

To the above statement Mr. Justice Matthews added:

> "Money paid, or other value parted with, under such pressure, has never been regarded as a

> voluntary act, within the meaning of the maxim, *volenti non fit injuria.*"

This Court held further that protest was not essential as it would have been unavailing, and judgment was rendered for appellant as to all sums not barred by the statute of limitations.

This case recognizes the special relation existing between the government and its contractors, and emphasizes the power and control of the government officials. To stress this view further, this Court quotes from one of the cases cited:

> "To make a payment a voluntary one, the parties should stand on an equal footing." *Robertson vs. Frank Bros., 132 U. S. 17.*

The *Swift case* cites and relies upon the *Robertson case.* Referring to the pressure brought to bear by the power of the government pressure "sufficient to influence the apprehensions and conduct of a prudent business man," the court called it "moral duress" and added that:

> "When the duress has been exerted by one clothed with official authority or exercising public employment, less evidence of compulsion or pressure is required."

And further, in referring to the *Swift case:*

> "We held that the apprehension of being stopped in their business by non-compliance with the Treasury regulations was a sufficient

> moral duress to make their payments involuntary."

This Court was careful to point out by specific statement the difference in legal effect, between pressure and compulsion exerted with all the power of official authority, and that exerted between dealing "on an equal footing."

Mr. Justice Bradley, speaking for this Court, quoted at length from the early decision of *Maxwell vs. Griswold, 10 How. 242*, where, referring to pressure brought to bear by government officials by which claimants were "coerced to do an act in order to escape a greater evil," it was said "nor it can hardly be meant in *this class of cases* that to make payment involuntarily it should be by actual violence or physical duress. It suffices if the *payment is caused on the one hand by an illegal demand and made on the other part reluctantly and in consequence of that illegality.*"

To quote from the case:

> " * * * it is true, the fact that the importer was not able to get possession of his goods without making the payment complained of, was referred to by the court as an important circumstance; but it was not stated to be an indispensable circumstance. The ultimate fact, of which that was an ingredient in the particular case, was the moral duress not justified by law. When such duress is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby ought not to be regarded as voluntary."

The same principles should apply whether the transaction with the government is a payment, receipt, contract or modification of contract.

Conclusion

The cases cited make clear the principle that where a plaintiff has made an alleged settlement with the government, which he seeking to set aside, whether the settlement be deduced from a receipt, acceptance of payment, entering upon performance under new terms, an acceptance of an award or a new contract, he is entitled to have the settlement set aside where it is shown that he was not dealing on equal terms with the other party because he was subject to the power and control of the government over his business, and that he was dealing with executive officers of the government whose attitude was repellant of appeal or any alternative but submission with its consequences, and he gave the receipt, accepted payment, entered upon performance or accepted the award because he was required to do so by the officers, acting under an erroneous and illegal interpretation of the rights of the government. Under such circumstances, the action of the plaintiff in accepting the alleged settlement is not to be deemed a voluntary act within the meaning of the phrase, *volenti non fit injuria*, if the act was done under protest, and in view of the threats of the officers which they had power to carry out, and which if carried out would inflict ruinous consequences on the plaintiff's business. Of course, such threats must be those "sufficient to influence the apprehensions and

conduct of a prudent business man" and the coercion brought about by them must be to "do an act in order to escape a greater evil."

Whatever designation may be given to the act which makes it "involuntary" in law, whether it is called "coercion," "compulsion," "pressure," "constraint," "a species of duress," or "moral duress," the principles of justice recognizing the particular relation between the parties remain the same and are decisive. They are entirely applicable to the case at bar. The cases cited leave no doubt of the right of the appellant to recover here or of the legal or equitable obligation of the government to reimburse the appellant for its losses, notwithstanding the "modified contract" forced upon it by General Pierce.

Indeed, the case at bar in many respects is stronger and more clearly calls for relief than those cited. Here there was not only a clear and obvious misinterpretation of the right of the government under the contract, insisted on by the Ordnance Department in claiming the right to cancel the contract, but the cancellation proposal was so palpably without any consideration whatever moving to the claimant and the other mills that in itself it shows the injustice and lack of fairness on the part of the government, and clearly shows that the mills are justified in asking to have it set aside. This would restore to the parties the rights which they would have had if such modification agreement had not been forced. Aside from the argument that the so-called modified contract should be set aside on the ground of no consideration for it, the lack of considera-

tion—the fact that the government gave up nothing and made no concession of any advantage of any kind to the claimant, throws a flood of light upon the allegation that it was secured by threats, compulsion, and coercion, and is supported by the record clearly showing that it was so secured. Besides, this lack of consideration makes easy of application the equitable principles involved, for the setting aside of the modified contract does not involve the retention of any benefit which the claimant has secured by such contract and which cannot now be restored to the other party. That the modified contract was wholly one-sided in its benefits and that it was simply a case of one party doing less than he was already bound to do without any corresponding benefit to the other side is clear and has already been explained. The government was obligated to take a certain amount of linters. Its so-called settlement proposal was simply to take less and force the loss for the balance on the claimant. It got nothing but its loss. There was no doubt of the liability of the government on its contract; there was not even any disputable question to be compromised between the parties.

The record shows that General Pierce arbitrarily decided that he had a right to terminate the contract because he said so far as he was concerned the war was over, and then he forced his interpretation upon the mills, with all the power that their business obligations, commitments to the farmers, control of the Food Administration and War Industries Board, fear of loss of good-will and financial disaster enabled him in this particular instance to exert so successfully. The

fact of this pressure, the compulsion exerted and the necessity of the claimants, having "no alternative but submission," are not disputed in this case. They were set forth at length by the Board of Contract Adjustment upon the hearing of this case before that Board, which had the advantage of having seen, heard and examined all witnesses in person. (Decision of the War Department, Board of Contract Adjustment, Vol. II, p. 314.)

As the rules applied by the Court of Claims to the facts in this case are contrary to the well-settled principles laid down by this Court in the cases above cited, we respectfully ask that the decision of the Court of Claims be reversed, that the Modification of Seller's Contract of Sale be set aside, and that this cause be remanded to the Court of Claims with proper directions for further proceedings and appropriate relief not inconsistent with the decision of this Court.

Respectfully submitted,

CHRISTIE BENET,
Attorney for Appellant.

WADE H. ELLIS,
DON F. REED,
Of Counsel.

Washington, February 5, 1926.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

REPLY BRIEF OF APPELLANT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

REPLY BRIEF OF APPELLANT

Without attempting to discuss in detail the brief of the United States, and without needless repetition, the appellant deems it proper to call attention to the following:

I

It is claimed in the brief for the government that the arguments for appellant are based upon facts not contained in the findings of the Court of Claims, and particular attention is called to the claim that there is nothing in the findings which supports appellant's view regarding the situation in the industry at the time the ultimatum was submitted to the linter producers.

This situation was fully alleged and set forth in the petition (R. 15-16-17) and evidence in substantiation thereof was before the Court, and the Court made no finding contrary to or limiting such facts. It is the position of the appellant that the matters thus alleged in the petition were such as the Court could take judicial notice of, and it is manifest from the opinion of the Court of Claims that such notice was taken. The facts so alleged find support also in public documents of the government, and we respectfully embody herein excerpts which are pertinent:

> "Government control of the linter crop. The immediate need then, was the stimulation of linter output, and with this in view, cottonseed crushers were required to increase the cut of linters. After May 2, 1918, at the order of the War Industries Board, the oil mills were required to 'cut clean mill run linters known as munition type' exclusively. Moreover, crushers were compelled to cut a minimum of 145 pounds of linters per ton of seed crushed. And for the period May 2, 1918, to July 31, 1919, these linters were to be sold to no one other than the United States government, which agreed to take over the supply produced from the 1918-1919 crop at a price of $4.67 per hundredweight f. o. b. points of production." (History of Prices During the War, W. I. B. Price Bulletin No. 1, Government Printing Office, 1919, page 306.)

In the same volume at page 112, after setting forth other facts in connection with the "control over 1918 crop" it is said:

> "The War Industries Board had already fixed the price of linters; and thus there was inaugu-

rated a complete system of price fixing extending from the farmer who raised cottonseed to the retailer who disposed of the products.

"The post-armistice situation. With the signing of the armistice arose the problem of disposing of cottonseed products at the agreed prices. Not only had large amounts of seed and oil accumulated in certain localities, but there was also a large amount of cheaper foreign oil competing in the American market with domestic cottonseed oil, and underselling it.

"Moreover, there was the linter difficulty with the War Industries Board which threatened seriously the linter market. The industry was in a precarious condition, and it seemed as if there would be little relief afforded from any quarter, when on February 11, 1919, the Food Administration called together representatives of all branches of the industry with a view to finding a solution. It was the opinion of these representatives that the industry would be greatly aided by the stimulation of exports, and they further recommended that—

> 'Such orders as were received for lard substitutes through the Food Administration or by the manufacturers should be manufactured from domestic cottonseed oil; that crushers should use their best efforts to purchase seed from localities where the heaviest congestion of seed existed; that refiners should purchase crude oil from crude mills where the heaviest congestion existed. They further unanimously agreed that the stabilization plan of the Food Administration should be car-

> ried out to its completion, notwithstanding the fact that the armistice had changed the situation, and there was a fear of greater disaster to the industry if the Food Administration should cease its efforts to maintain the price while this congested condition existed.' "

Further, at page 113, it is said:

> "By the end of May virtually all of the cotton seed of the 1918-1919 crop had been disposed of at the stabilized price. The major part of the manufactured products had also been marketed on the basis of the agreed prices, and stocks were about equal to the average for May of previous years. It was evident, therefore, that control of the cottonseed industry was no longer necessary, and on May 31, 1919, 'all price regulations and agreements regarding cotton seed and products manufactured therefrom, including lard substitutes,' were withdrawn."

An interesting and full statement of these facts will also be found in the Decisions of the Board of Contract Adjustment of the War Department, which is the decision referred to in Finding of Fact XXI, R. 68, when this situation was before that Board, commencing at page 314, of volume 2. Quoting from page 344, the Board there said:

> "9. For the reasons above set out, and after careful examination of the great mass of testimony and evidence in these cases, this Board is compelled to conclude, that by a great preponderance of evidence, the Ordnance Officers, by

their statements and conduct on the 30th of December, gave sufficient cause for justifying the belief on the part of the linters committee that if they did not accept the offer made, and later embraced in the modification of Seller's Contract of Sale, by 7:00 o'clock that night, then the government intended to breach the contract altogether and to decline to accept any linters whatever, and that claimants would be forced to go to the Court of Claims to have their rights adjusted.

"This alternative was presented to claimants with the full knowledge also of the Ordnance Officers that it was the belief and the fear of claimants that if the contracts were breached altogether and the matter placed in litigation the stabilization scheme of prices, upon which the claimants had made large commitments in seeds purchased, and upon the faith of which the claimants were under moral obligation to pay for cotton seeds still in the hands of the farmers at the stabilized price, would fail, resulting in irreparable loss to the cotton seed industry, bankers, and others associated with it. It is apparent, also, that claimants accepted the offer made by the government as the best means, in their judgment, of preventing the disruption of the stabilization scheme; and that claimants agreed to the modification offer to avoid two results:

(a) The litigation of their agreements in the Court of Claims; and

(b) The probability of the disruption of the stabilization scheme for the remainder of of the season."

The Court of Claims did set forth in its findings the

tremendous amount of the product which was involved in the control of the War Industries Board and the Food Administration, and did set forth in a general way the nature of this control; and did indicate in such findings the concern that the farmers and bankers, in addition to the cotton seed millers, had in this situation when it was presented to the linter committee in Washington (Finding XIX, R. 60). The fact that the Court took notice of this situation is further evidence in its opinion (R. 65) where it is stated that claimant was at the time in "fear of financial disaster."

2.

It is said on page 18 of the brief for the United States that the price to be paid for linters under the modified contract was greater than the price named in the original contract, which constituted a consideration for the modification of Seller's Contract of Sale. This is a misunderstanding of an essential fact in the case. The basic price in the two contracts was exactly the same, to-wit, $6.77 for the linters to be taken from each ton of cotton seed crushed. While the price per pound is different, it must be noted that under the original contract the cut was to be not less than 145 pounds from each ton of seed, whereas in the modified contract it was to be not more than 75 pounds from each ton of seed.

The munition type of linters called for under the original contract had no value commercially, and it was at the request of the War Industries Board on November 28, 1918, that the cut was reduced to a maximum of 75 pounds per ton of seed, as stated by that Board, "to avoid an obvious economic waste." (R. 59)

3.

There is a further misapprehension of the facts on

page 19 of the brief for the government, in the statement that the so-called modified contract was an agreement to accept "a much greater quantity of linters" than the government would have been required to take under a cancellation according to the terms of the original contract. This assertion is without basis in the findings of fact or in the evidence.

The cancellation clause could not be invoked at the time referred to because the war had not been terminated, as was then maintained by this claimant and which now appears to be conceded by counsel for the United States.

But if the cancellation clause had been taken advantage of in the proper manner and at the proper time, the government would have been obligated to accept deliveries for one month after the cancellation and to hold the seller harmless from all loss caused by such cancellation such as firm commitments for material purchased to fulfill this contract (R. 45), in addition to lint on hand at date of such cancellation.

4.

It is also stated on page 20 of the brief for the government that the linters manufactured up to July 31, 1919, were accepted by the government, "almost in their entirety." This statement finds no support in the findings in this case, but on the other hand in Finding XVIII (R. 60) the final offer of the government to the linter committee was, that it "would take only a part of the linters thereafter produced by the crushers from January 1, 1919, to July 31, 1919, not to exceed 150,000 bales. * * *"

5.

On page 21 of the same brief emphasis is laid upon the following statement:

> "Furthermore, it is to be noted that this appellant made no protest and no attempt to repudiate the settlement agreement of December 31 * * * until on June 29, the last day before the expiration of the period within which claim could be filed under the Dent Act, the appellant filed a claim."

This is the keynote of the argument of appellee and is in direct conflict with the express statement of the Court of Claims, that the agreement by which the modified contract was accepted, "was entered into under protest," and the finding (Finding XIX) that at the very time of the conferences in Washington, when the ultimatum was put up to the mills and the appellant, the mills and this appellant protested and preserved their protest. Finding XXI to which counsel for the government refers, obviously relates to the mere affixing of signatures much later and cannot be interpreted in any other way, for otherwise it would be directly in conflict with the specific finding (Finding XIX, R. 60) on the subject of protest, and would leave wholly unsupported the opinion of the Court of Claims on the subject where it is said in express words:

> "It is true that the plaintiff protested against signing the contract, and asserted that it signed it only because it was under the pressure of financial necessity. It signed because it believed that the terms proposed by the government were the best it could get, and it required money for the conduct of its business, and feared financial disaster should it refuse to sign." (R. 65.)

On page 22 it is contended that the record does not contain anything from which a measure of damages can be calculated. This argument requires no further attention than to say that in Finding XXII (R. 63) the Court specifically found what the measure of damages should be if the plaintiff in the Court below was entitled to recover, giving details of the amount due for linters which were not taken up by the government and making the proper credit for linters which were disposed of to others than the government.

In this connection it is stated that (page 23) "On May 1, 1919, the market value was higher than $.068, which was higher than the original contract price of $.0467." This date while correctly taken from the petition, was obviously a typographical error, but one which is easily corrected by reference to the entire paragraph in which it occurs (R. 7). Examination of the record shows that the date when the market price of linters was specified was prior to the time the government commandeered the entire output, and required all production to be furnished to the government. This was of course May 1, 1918, and not 1919.

CHRISTIE BENET,
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WADE H. ELLIS,
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Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL,
Appellant,
vs.
THE UNITED STATES,
Appellee.

Appeal from the Court of Claims.

MEMORANDUM.

For the information of the Court and in further answer to the question of this Court, made during oral argument as to the quantity of munition linters, of cotton seed and its other products, which the Hartsville Oil Mill had on hand on December 30, 1918, the appellant respectfully calls the Court's attention to the following:

1.

Finding XVIII, R. 60, shows specifically that the appellant and the other crushers had on hand on December 30, 1918, 270,000 bales of munition linters. This finding further shows that the proposition made to all the mills, including the appellant, at that time was an entire breach of the contract of September 26, 1918, and in the language of the finding that * * * "The United States would breach the contract of September 26, 1918, would refuse to accept or pay for any linters

whatever, either those on hand, accepted, inspected and tagged, or thereafter to be produced, and the plaintiff and other cotton seed crushers could seek their remedy in the courts."

2.

Finding XIX, R. 60, shows that "the plaintiff and other cotton seed crushers, preserving their protest, etc."

3.

Finding XX, R. 61, shows that "the plaintiff and other cotton seed crushers" were dealt with by the Government thereafter in respect of the carrying out of the ultimatum of December 30, 1918.

4.

The "Modification of Seller's Contract of Sale," R. 51, Par. 3, was signed by the Government by its Agent and by the appellant, and specifically referred to "all linters produced prior to and on hand as of January 1, 1919."

5.

In addition to the above specific findings, in the memorandum opinion of the Court of Claims, it is stated:

> "It is true that the plaintiff protested against signing the contract and asserted that it signed it only because it was under the pressure of financial necessity. It signed because it believed that the terms proposed by the Government were the best it could get and it required money for the conduct of its business and feared financial disaster if it refused to sign." R. 61.

6.

We respectfully submit that the above specific citations from the findings and the opinion, together with others in the record not set out in detail herein, and the logical inferences that necessarily flow therefrom, clearly show that the appellant had some quantity of munition linters on hand *(the exact amount of which is set out in the testimony in the Court of Claims and not disputed)*, and, therefore, was in a situation where the threatened breach applied specifically and sufficiently to it to sustain the appellant's position on this appeal.

However, if this Court finds it necessary or desirable to have further facts as to the amount of munition linters, or cottonseed and its other products which the appellant had on hand December 30, 1918, it is respectfully suggested that it is within the power of this Court, under the statutes and procedure, to direct the Court of Claims to make a specific finding of fact on this particular point. The record in the Court of Claims establishes these facts in detail by clear and uncontradicted testimony.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

HARTSVILLE OIL MILL, *Appellant,*	Appeal from the Court of Claims.
vs.	
THE UNITED STATES, *Appellee.*	No. 609.

PETITION FOR STAY OF MANDATE AND MODIFICATION OF JUDGMENT

Comes now the appellant in the above entitled action and respectfully petitions this Honorable Court to grant a stay of mandate and modification of judgment, on opinion rendered by Mr. Justice Stone on April 12, 1926, and in support of such petition respectfully shows:

I.

STATEMENT.

In the opinion denying relief to appellant in this case this Court calls attention to the insufficiency of the findings of the Court of Claims on certain issues in the case, which this Court deemed necessary to a decision on the theory upon which this Court decided the case. The missing facts related to the situation

of appellant and the exact injury threatened it at the time appellant alleged it was coerced by the officers of the Government to accept the ultimatum of December 30, 1918.

Attention of the Court has been called to the fact that the necessary proof to sustain ample and complete findings on this subject was before the Court of Claims, and is now in the records on file in that Court. The Court of Claims, however, in the findings which it sent up to this Court, omitted findings on the subject referred to, the Court of Claims having treated the case as a representative case, having decided it upon a theory which made immaterial such particular findings, but which this Court now deems essential to a correct determination of the issues.

In such a situation in a case coming from the Court of Claims, we respectfully urge, on the authority of *Winton vs. Amos, 255 U. S. 373, 41 Sup. Ct. Rep. 342, 65 L. ed. 684,* that the proper practice would be to remand the case to the Court of Claims, with directions to supply the missing findings of fact.

We therefore ask that the judgment be modified, and instead of simple affirmance, that the case be sent back for further findings in accordance with the action of this Court in similar cases.

There is a special reason why that course should be followed in this case. This appeal was prosecuted on behalf of 285 cottonseed oil mills, each having a petition on file in the Court of Claims, and each of which can make the proper proof as to the elements of damage, as well as proof of the other facts found by the Court of Claims in the Hartsville case.

There is on file in the Court of Claims in case numbered Congressional 17341, Rose City Cotton Oil Mill

vs. U. S., a stipulation signed by attorneys for the mills and for the government, to the effect that the facts found by the Court of Claims in the Hartsville Oil Mill Case "shall be taken and regarded as the facts in the following listed cases, the same being all of the cases brought under Senate Resolution No. 448, etc., without the necessity of either party again taking testimony to prove the same."

> "Provided, however, that if the claimant shall finally prevail in the Hartsville case, plaintiffs in the case herein listed shall be required to make due proof of ownership and non-assignment of their respective claims and shall likewise be required to make due proof of their corporate identity and of their loyalty, as well as due proof of the amount of damage sustained respectively by the said plaintiffs."

Each of the claimants is able to make the proof required, and it is inequitable and unjust that each of the cases should be adversely affected because the Court of Claims made no finding as to the threatened injury to the Hartsville Oil Mill, notwithstanding the fact that ample proof of such injury was before it.

II.

ARGUMENT.

That this case turned on the insuffiency of the findings is shown by the following quotations from the opinion:

"A difficulty encountered by the appellant at the outset is that this view is not supported by the findings made. On its own theory of the case, appellant must prove the probable injury which it would have suffered from the threatened refusal of the Government to carry out its contract, and that fear of that loss was the effective cause of its executing the settlement contract."

"There is no finding with respect to the nature or extent * * * of the loss which appellant would have suffered if, on December 30, 1918, the Government had refused to go forward with its contract, or that the legal damages for such breach of contract would not have been adequate to compensate for its loss. There is no finding that appellant was induced to sign the settlement contract by fear of the consequences of a refusal to sign."

This being the case it is obvious that if these facts had been covered by a finding of the Court of Claims a different case would have been presented to this Court and the ground of the decision-insufficiency of proof-would not have been decisive.

It is conceded on all sides that abundant evidence was and is before the Court of Claims to support a specific finding of all these facts necessary to supply the insufficiency of proof.

The established remedy in such a situation is that the appeal be remanded to the Court of Claims for additional findings of fact, which are vital to a proper decision of the issues involved, as was done in *Winton vs. Amos, supra,* which decision is controlling.

In this appeal, as in the Winton case

> "The facts as found are inconclusive respecting the crucial point."

That was an appeal from a decision of the Court of Claims denying to the appellant the right to compensation for legal services rendered to numerous Choctaw Indians, over a period of years. Recovery was sought upon a *quantum meruit* basis, after certain contracts between appellants and individual Choctaws had become ineffective by operation of law.

> "In authorizing the present suit, Congress recognized that it was impracticable to bring before the Court all interested individual Choctaws; hence, treating them as a class, it designated the representatives who should defend them, by analogy to the familiar practice in Equity Rule 38 (226 U. S. 659, 57 L. ed. 1643, 33 Sup. Ct. Rep. XXIX.)"

The same object was sought in the present suit, without any action of Congress, however, as evidenced by the stipulation filed to the effect that the instant appeal shall control all other cases. The object was to avoid a multiplicity of suits, which is and ought to be a very commendable one.

In the findings of the Court of Claims in the Winton case there were insufficient findings, and requests were made, prior to appeal, for additional findings, but such requests were not made within the 60-day period. The Court of Claims, however, denied the request for additional findings upon the merits, deeming them immaterial, rather than upon the fact of failure to move

within the proper time, holding that such requests were too vague and were insufficient. Such additional findings were vital to appellant's case.

This Court held, however, that although the appellant had not complied with the rules in reference to motions for additional findings, and notwithstanding the fact that the requests were not sufficiently definite to enable the Court of Claims to pass upon them, the cause should be remanded for further findings of fact.

This Court, as an act of justice, went to extreme lengths to assist in getting before it all of the facts which were pertinent.

Surely, the present case would seem to be within the procedure adopted by this Court in the Winton case, and it is respectfully submitted that this Court, by the exercise of its discretion, could have before it testimony which would completely supply the deficiency in proof raised in the opinion, in the first and second paragraphs on page 4, and which lack of proof was one of the compelling reasons for denying the appellant relief.

This would seem to be particularly true where the testimony establishing these facts was not contradicted by the government but was overlooked, or omitted through apparent inadvertence, by the Court of Claims in making its findings. This omission by the Court of Claims is further evidence of the fact that the Court of Claims considered the case from the standpoint of the entire industry and not from the standpoint of this appellant or any individual mill.

The record in this case clearly shows that while the proceeding is brought in the name of the Hartsville Oil Mill, that it is in fact and in effect a proceeding

by 285 cottonseed crushers mentioned in Senate Resolution No. 448, Senate Bill No. 4479, March 3, 1923, and that all the cases have been prosecuted in the name of one of the claimants.

Referring briefly to the findings of the Court of Claims, Finding VI (R. 56) sets forth the executive order of the President of the United States placing under license control of the United States Food Administration all dealers in cottonseed and manufacturers of cottonseed products, including this appellant. In Finding XI (R. 57) is set forth Circular 49 of the Food Administration which set out the prices that appellant and all other cottonseed crushers were to pay for cottonseed, and the prices at which the derivative products were to be sold, referred to as the stabilization scheme of the Food Administration. In Finding XVII (R. 60), the final offer of the representatives of the government was made to the Linter Committee representing all of the cottonseed crushers, and the notice was that unless ALL of them accepted such offer within one hour from the time it was made, the government would breach the contract of September 26, 1918, and that appellant and all other cottonseed crushers could seek their remedy in the courts.

In Finding XXIII (R. 63), it is stated that appellant and all other cottonseed crushers were under orders of the Food Administration to maintain the price of cottonseed and cottonseed products theretofore fixed by the Food Administration, and to continue the manufacture of such products for the entire crop year of 1918-1919.

There is further evidence that this pressure was applied to the entire industry and the far-reaching effect on other lines of business in the South, in Find-

ing XIX (R. 61), which states that on December 30, 1918, when the Government officers made their final offer to the cottonseed crushers, that there were numerous crushers, farmers, bankers, as well as others interested in the cottonseed industry, awaiting the outcome of the conference with the officers of the Government.

It therefore appears that from the entire course of this case, in the testimony, in the record before the Court of Claims and in the findings of that Court, this case has been one that was construed as affecting the entire cottonseed crushing industry, and each individual member thereof, and not as applying solely to the position of this individual appellant. If relief now is to be denied in each of the individual cases, for the reason that there has been no apportionment of the loss among the individual members, the Government by the very simple expedient of saying that they were not individually affected by the conduct of the officials on December 30, 1918, escapes liability for what was described by counsel for the Government in the argument in the Supreme Court of the United States to have been "illegal, unjust and reprehensible," and which Mr. Justice Stone condemns in no uncertain terms.

There is a specific finding by the Court of Claims that the appellant was actually damaged in the sum of $5,967.45 (Finding XXII, R. 63) by execution of the Modification of Seller's Contract of Sale, after the threat of breach by the Government, and thus suffered a loss of a definite and substantial sum. That court further stated in its memorandum opinion (R. 65) that the modified contract was signed because the

plaintiff (appellant) "believed that the terms proposed by the Government were the best it could get and it required money for the conduct of its business, and feared financial disaster if it refused to sign." These findings certainly raise a strong presumption of the pressure to which claimant was individually subjected.

It is therefore apparent that the Court of Claims did treat this case as a test case for 285 mills and did, in addition, treat the same as an individual case in which this appellant's damage was separate, distinct and definite, and that such damage was the direct result of the threats of the Government officials, made to each of the 285 claimants separately and individually, as well as collectively.

If this Court should question as to why additional findings were not requested, we submit that the effective date for the repeal of Section 242 of the Judicial Code, under which this repeal is prosecuted, was May 14, 1925. The decision of the Court of Claims was rendered on May 11, 1925, four days prior to such repeal, and there was not sufficient opportunity to move for such additional findings and have that Court rule thereon and preserve the right of appeal under the old rule. There is the further fact that it was considered that the findings of that Court, meager and inconsistent as they were, were still amply sufficient to establish the right of the appellant to relief.

Specific reference is made to reply brief of appellant from which the following quotation is made, as to the situation of this appellant and the entire industry on December 30, 1918:

> "This situation was fully alleged and set forth in the petition (R. 15-16-17) and evidence in sub-

> stantiation thereof was before the Court, and the Court made no finding contrary to or limiting such facts. It is the position of the appellant that the matters thus alleged in the petition were such as the Court could take judicial notice of, and it is manifest from the opinion of the Court of Claims that such notice was taken. The facts so alleged find support also in public documents of the Government, and are set forth at length in reply brief of the appellant, to which attention is respectfully called in this connection."

This suggests the question which this appellant has made all through this litigation, to-wit, that one of the compelling reasons for acceptance of the ultimatum of the Government, of December 30, 1918, was that if the modified contract were not accepted, the stabilization scheme of the Food Administration would crash, and such a crash would mean disaster not only to the cottonseed crushers, but to the farmers, bankers, and to the entire South.

It was set out in the petition (R. 15-16) and not questioned or modified by the findings of fact that this appellant and the other cottonseed crushers were committed and obligated to the farmers of the South—and to the Food Administration, to pay $70 per ton for cottonseed, for each and every ton of cottonseed produced during the season of 1918-1919; whether brought to the market early or late; that the Food Administration had assured the farmers that such price would be paid; that if the Food Administration had failed to maintain their stabilization scheme the result would have been an enormous loss in seed already purchased, and in the products already manufactured from such

seed. The element of good will in the entire industry with the farmers, bankers and business men of the South was at stake, and this fact was known to, and taken advantage of, by the officers of the Government. (R. 16-17.)

Taking into consideration the tremendous pressure that was on all cottonseed crushers and on others to maintain the stabilization scheme, which had been established by one branch of the Government and was then being wholly ignored by the Ordnance Department, another branch, and the further fact that the Government threatened to refuse to take any part of the 270,000 bales of linters already accepted, inspected and tagged, as to which the obligation of the Government was fixed, it will be seen that this pressure was such that it destroyed the freedom of action of the cottonseed crushers, and of this appellant, one unit of the industry, with its pro-rata share of the total prospective loss.

We respectfully ask that this Court contemplate for a moment the consequences if this threat of the Government had been carried into effect and the result to this appellant and to the whole cottonseed crushing industry; with enormous quantities of linters on hand which were not commercially valuable and which belonged to the Government; with large quantities of seed on hand which had been bought at a price established and maintained by the Government and which would heat and rot if kept for any length of time; with large quantities of cottonseed products on hand, produced from seed, purchased at the Government price; and in addition, the solemn obligation of this appellant and all other cottonseed crushers to the farmers to pay

$70 per ton for every ton of seed produced during the season 1918-1919, the loss would have been appalling. And everything depended upon the stabilization scheme of the Food Administration, a structure reared by the Government and which the same Government threatened to wreck, and the only reason it was not wrecked was because this appellant and the other cottonseed crushers at all times 100 per cent patriotic in their observance of this and other war measures, chose to submit for the time to the unconscionable, illegal and unjust demands of bureaucratic officials, save their industry from utter chaos and financial ruin and await the day when reason and justice should be restored. The Court of Claims specifically stated that appellant

> "feared financial ruin if it failed to sign." (R. 65.)

This situation was such that the appellant and the other cottonseed crushers could not stand on their legal rights and submit their differences to the courts. Had the Government carried out its threat of December 30, 1918, and it had the power to do so, before a petition could have been prepared to get the matter before any court, much less a hearing thereon, the whole financial and commercial structure of the South would have toppled. The question would then have been one of dollars and cents to the courts, but on December 30, 1918, there was an element involved which could not be measured in dollars and cents.

We respectfully submit that appellant has shown that the remedy at law, in view of the probable consequences of the threatened action of the Government would have been wholly inadequate.

It is manifest that a hardship will be worked upon all of the claimants in the 284 remaining cases, if the decision of the Court of Claims is affirmed, in view of the stipulation referred to. The effect of the decision of this Court is to state that the Hartsville Oil Mill is not entitled to relief, for the sole reason that it failed to prove the proportion which it shared in the certain loss which accompanied the threats of the Government, and this Court cannot hold for the appellant, for the reason that the Court of Claims failed to make a finding on the subject.

The effect of the entire proceeding is to say, that since the Court of Claims failed to make a proper finding of fact which would entitle one claimant to relief, 284 other claims in which proof of damage, as well as proof of all other elements upon which the case is based, can be made, shall be denied the right to make their proper proof. This is in effect to deny each of the claimants the right to his day in Court, and to enable the Court of Claims to escape a mandatory duty under section 151 of the Judicial Code, requiring it to find and report to Congress the facts of each case, and whether each of the claimants is entitled to relief, legally or morally, by the simple expedient of failing to make appropriate findings in one case which the evidence warrants.

There is another and further reason why this case should be remanded to the Court of Claims for additional findings of fact, and that is, that the negotiations referred to in par. 5, on page 2, of the opinion were instituted by Government officers without any legal right under the provisions of the cancellation clause of the contract of September 26, 1918, which provided for cancellation only in the event of the termination of the present war, which event had not then

come to pass. The appellant contended throughout such negotiations that its legal rights, under a proper construction of the contract, were denied by the representatives of the Government. These negotiations were therefore instituted and carried on by the Government in the spirit of coercion of this appellant and the other cotton seed crushers, and the Government adhered to its illegal construction of the cancellation clause of the contract of September 26, 1918, and compelled the appellant to negotiate against its will. (Finding XIX, R. 60.)

In the opinion of this Court no mention of the illegal construction thus placed upon the contract of September 26, 1918, by the officers of the Government, and its coercive effect upon this appellant and the other cottonseed crushers, is made.

In the opinion of this Court in the second paragraph on page 5 it is stated that the *Freund, Hunt* and *Smith* cases, relied upon by this appellant, present different considerations than those involved in this case. The point of difference pointed out is that the contractors in those cases were called upon to perform extra services, representatives of the Government having assumed the position that the services demanded were stipulated for by the terms of the contracts. It was held that such services were not so stipulated and the contractors did not assent to the Government's construction.

The only essential difference between those cases and this case is that the contractors in the *Freund, Hunt* and *Smith* cases, while protesting against the construction placed upon their contracts by officers of the Government, and under threats of those officers, proceeded to carry out their contracts according to such erroneous and illegal construction, without sign-

ing any other agreement, and thereafter brought suit for additional compensation; and in this case the action of the Government officers was the same, as to their illegal and erroneous construction of the contract, as to the threats, as to the conduct of the officers in dealing with the contractors (which conduct this Court describes as "discreditable" and "injurious") as to performance, as to protest and as to consequences, but the cottonseed crushers signed a supplemental contract, wherein they bowed in submission to such erroneous construction.

That is to say, if threats are made against four contractors under like circumstances, and three of them accede to the demands which accompany the threats, but enter upon performance without agreeing to perfrom, they shall be rewarded, while the fourth, entering upon performance after agreeing to perform, shall be denied relief, although each had preserved his protest. If this is the law, we submit that no cause of action could be based on duress, if the person against whom the threats were made, protested, preserved his protest, but agreed in writing to go ahead regardless of such protest. If the party with a pistol at his head submits under protest and performs the illegal demands he can recover; if under the same circumstances he signs under protest an agreement acceding to the illegal demands he is precluded from recovery.

In paragraph one on page 5 of the opinion it is stated:

> "This threat was discreditable to the officers who made it and injurious to the Government, whose high obligation to deal justly and according to law, with those with whom it contracts might well have been their first concern."

Conversely, the officers acted discreditably, unjustly and not according to law. The settlement contract was forced on the appellant and the other crushers in the face of the stabilization scheme of the Government as a war measure adopted to insure the winning of the war, and in which this appellant and all other crushers cooperated one hundred per cent. Surely the parties were not dealing on equal terms when the Ordnance Department threatened to breach a solemn contract of the Government without legal right or excuse, and knowing that appellant and the other crushers could do nothing but accept what they had to offer.

If the action of the officers was successful in evading the "solemn obligation" of the Government to this appellant and the other crushers, as it appears to have been, then such actions would seem to be the proper subject for commendation, rather than for censure.

It is difficult to reconcile the statement above quoted, with the statement from the Freund case where identical actions were indulged in by the officers of the Government:

> "We cannot ignore the suggestion of duress there was in the situation, nor the questionable fairness of the conduct of the Government, aside from the illegality of the construction of the contract insisted upon."

And

> "But sometimes such contract provisions have been interpreted as if they enable those officers to remold the contract at will." *Freund vs. U. S.* 260, U. S. 60.

This sharp criticism of such "discreditable" conduct was a controlling factor in the *Freund* case in awarding the appellant relief, while in this case such conduct, while condemned, was not taken as a circumstance entitling appellant and the other crushers to that relief to which they are legally, morally and in good conscience entitled.

III.

CONCLUSION.

The gist of our argument is this: If, in a case decided by the Court of Claims important facts are omitted from the findings which may be immaterial to the lower court's theory of the case and are therefore omitted, but which are vital to a decision on the appellate court's theory of the case, and if, nevertheless, the appeal must be decided without obtaining the actual facts in the record in the Court of Claims, then manifestly, in the many instances where the theory of the Court of Claims may be different from that of this Court, the right of appeal is effectively cut off.

Since there is established precedent for remedying this situation (*see Winton vs. Amos, supra*), and since it cannot be definitely known what facts might be essential to this Court's view of the law until after the opinion is handed down, we respectfully request the Court to take the necessary steps to apply the remedy here, and prevent the injustice not only to this appellant, but to all the other plaintiffs in the Court of Claims whose cases turn on this one.

Wherefore, your petitioner respectfully prays this Honorable Court that the mandate of this Court be

stayed until the further order of the Court herein; and that this Court modify the judgment of April 12, 1926, and remand the case to the Court of Claims for further findings of fact.

Respectfully submitted,

CHRISTIE BENET,
Attorney for Petitioner.

WADE H. ELLIS,
CHALLEN B. ELLIS,
DON F. REED,
Of Counsel.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.

Christie Benet being first duly sworn deposes and says that he is counsel for the Hartsville Oil Mill, appellant in the case entitled Hartsville Oil Mill vs. The United States. Appeal from the Court of Claims, No. 609. That as such counsel he signed the petition for stay of mandate and modification of judgment.

That this petition is presented in good faith and not for delay.

(Signed) CHRISTIE BENET.

Sworn to and subscribed before me this 17th day of May, 1926.

(Signed) J. M. CANTEY, JR.,
Notary Public for S. C.

(SEAL)

INDEX

AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, APPELLANT,

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The findings and opinion of the Court of Claims in this case were filed on May 11, 1925, and are reported in 60 Ct. Cls., (No. 17521 Congressional). They appear in the transcript of record, pages 55 to 66, inclusive.

JURISDICTION

The Court of Claims rendered a judgment dated May 11, 1925, dismissing the petition, and in favor of the United States in the sum of $674.06 for costs. (R. 66.) An appeal by the plaintiff was allowed on July 14, 1925, under Section 242 of the Judicial Code (later repealed by the Act of February 13, 1925, c. 229, 43 Stat. 936, 941).

STATEMENT OF FACTS

The appellant is one of about two hundred and eighty-five cottonseed millers or crushers who in the year 1918 were crushing cottonseed under regulations imposed by the Food Administration, and were supplying cotton linters to the United States. The short fibers that adhere to the cotton seed after the removal of the staple cotton by the first ginning process are called linters. These linters were of the munitions type, used in the manufacture of explosives, averaging 145 pounds per ton of seed cut, while commercial linters ran 75 pounds or less. (Findings VI, VII, XI, R. 56, 57.) The regulations specified prices which the mills should pay to the producers and should in turn receive for the various products of the seed, excepting linters (Findings VI, VII, XI, R. 56, 57), and thus constituted a price structure known as the " stabilization scheme " of the Food Administration (Finding XI, R. 57).

The linters were supplied through an agent of the Government known as the Du Pont American Industries, Inc. (Finding X, R. 57), under contracts (Finding IX, R. 57), the price being fixed pursuant to agreement with the cottonseed crushers, by action of a special section of the War Industries Board, at $0.0467 per pound f. o. b. point of shipment (Findings X, VIII, R. 57).

Under date of September 26, 1918, the contract between the appellant and the Government by its

agent above mentioned was reduced to writing (R. 43) and the appellant continued to deliver linters in accordance with its terms until November 28, 1918, when the following change was made (Findings X, XV, R. 57, 59):

On November 28, 1918, the need for munitions linters having passed, the Government requested the appellant to return to the commercial practice of making linters at the rate of 75 pounds or less to the ton of seed crushed, and the appellant complied with this request. (Finding XV, R. 59.) From this time on, negotiations were held between a committee representing the appellant and other crushers and the representatives of the Government, with a view to a final settlement of all the obligations of the Government and the appellant and other crushers under the contracts. (Petition, Par. XXVII, R. 14.) On December 10, 1918, the linters committee submitted a final offer of settlement to the representatives of the Government, including the Ordnance officials (Finding XVI, R. 59), which offer, it will be observed, required that the Government take every pound of linters to be produced by the appellant and the other mills during the entire season ending July 31, 1919 (the original contract with this appellant had been for a specified amount of 4500 bales), guarantee the producers against loss, and sell no munition linters owned by it at less than a certain fixed minimum price. (R. 48.)

This offer of settlement, though approved by the War Industries Board and the Food Administration, was rejected by the Ordnance Department. (Finding XVI, R. 59.) A final conference was held on December 30, 1918, between the linters committee and representatives of the Ordnance Department, the War Industries Board having gone out of existence on December 21. (Finding XVII, R. 60.)

The contract of September 26 provided that in the event of the termination of the war the Government might cancel by giving notice on or before the first day of the month when cancellation was to take effect. Any cancellation notice, to be effective on January 1, 1919, therefore, must be sent promptly. The linters committee, with its offer above mentioned, and the representatives of the Ordnance Department seemed to be far apart. Accordingly, on that day, December 30, 1918, the officials representing the Government notified the cottonseed crushers that unless they accepted the offer of the Government mentioned in the next paragraph, the United States would breach the contract of September 26, 1918, would refuse to accept or pay for any linters, and would leave the appellant and other cottonseed crushers to their remedy in the courts. (Finding XVIII, R. 60.)

The Government's offer just mentioned was embodied in the modified or settlement contract executed under date of December 31, 1918. (Finding

XX, R. 61.) It altogether changed the relation between the Government and this appellant, as well as between the Government and the other crushers, in respects which will be treated hereafter when the respondent comes to speak of the consideration upon which it was based. (Finding XX, R. 61.) It is found at page 51 of the Record. It was preceded by a notice of cancellation sent out by the Government by telegram on December 30 to the various cottonseed crushers, notifying them that their contracts were cancelled and stating to these crushers that their committee had tentatively agreed upon a form of settlement contract. (Finding XX, R. 61.) It is this modified contract, dated December 31, 1918, which the appellant claims was executed under duress and was without consideration.

The appellant has stated the facts at some length, but the Court's attention is respectfully called to the fact that a large part of its statement embodies facts not found by the Court of Claims, and its contention of duress is based on assumptions of fact which the Court of Claims refused to find. A comparison of the appellant's petition in the Court of Claims with the facts found by that court indicates the points in which the court disagreed with the appellant as to questions of fact in this case. These differences will be more fully referred to as they become material in the course of the argument. The Court of Claims has found the

facts constituting the history of the regulation of appellant's business by the Food Administration and the War Industries Board, failing, however, to find many facts pleaded and stated as facts in its brief by appellant.

The appellant seeks all along to create an atmosphere of hardship and compulsion, but the Court of Claims found nothing to show that the appellant had suffered from these regulations or found them other than quite satisfactory. The Government submits that the control exercised over this appellant by the War Industries Board or the Food Administration, or any other Governmental agency during the course of the operation of appellant's contract with the Government is perfectly immaterial on the question of whether or not at the time of the final conference on December 30, 1918, or later on, when it executed the modification of its contract, this appellant was the victim of duress. Any control the crushers may have been subjected to neither induced the appellant to make the modified contract nor deprived it of its right to sue the Government for any breach of the original contract, and that right, as the Government hopes to show, is a critical point in this case.

ARGUMENT

SUMMARY

I. The Court of Claims had jurisdiction to render the judgment that it did. Its jurisdiction was invoked in the form of a suit falling within the

jurisdiction of the court, regardless of any reference by Congress.

II. There is nothing in the findings of the Court of Claims to indicate that the appellant was forced to sign the settlement contract by fear of bankruptcy or financial distress; nothing to indicate that before it signed that settlement contract it did not have plenty of time to consider and decide whether it would do so; nothing to indicate that it yielded to or was influenced by acts of the Government. On the contrary, the appellant's conduct strongly indicates that at the time the settlement contract was entered into it did not regard itself as having been the victim of duress. The only finding is that the Government threatened to breach the original contract, and that the appellant accepted the terms offered.

III. It seems to be established law that a threat by the Government or by a private party to breach a contract unless the other party will make some new agreement does not constitute duress invalidating the second agreement.

IV. The settlement contract was supported by abundant consideration—difference in price to be paid for linters, relief to the appellant from the obligation to deliver a specific quantity of linters, the privilege to the appellant of selling in the open market, surrender by the Government of a reasonable contention that the war had terminated within the meaning of the contract.

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V. A settlement contract having been based, as above pointed out, on good consideration, is a good accord and satisfaction, being simply a voluntary acceptance by a claimant of a smaller sum than he believes to be due him. Furthermore, the appellant accepted the benefits of this compromise which he now seeks to repudiate.

VI. The appellant's pleadings are based on the theory that it has the right to recover the full contract price for the linters which the Government, relying upon and carrying out the provisions of the modified contract, refused to accept. There is no allegation and no finding, however, that title to these linters ever passed to the Government. There is no allegation or finding of the market value of the linters and nothing, therefore, on which appellant could base a recovery either under the theory of breach of the original contract or under the theory that the Government's obligations were fixed by the cancellation clause.

I

THE COURT OF CLAIMS HAD JURISDICTION TO RENDER A JUDGMENT DISMISSING THE PETITION

The case at bar is founded upon an express contract, so that, under Section 145 of the Judicial Code, this action could be maintained by the appellant in the Court of Claims without Congressional reference.

It is not perceived how the omission of a report to the Senate by the Court of Claims, complained of by the appellant, is relevant on this appeal.

If the jurisdiction of the Court of Claims was based on the Resolution of the Senate referring this matter to the court to investigate and report, it may be doubted whether the proceeding is a judicial one, over which this Court may, under the Constitution, exercise appellate jurisdiction. *Muskrat* v. *United States,* 219 U. S. 346.

The proceeding in the Court of Claims was not based on the Senate Resolution, but was a suit instituted by the appellant by the filing of a petition, and in which the judgment of the Court was invoked, "irrespective of the reference." (R. 20.) The appellant requested the Court of Claims to act on that view. (R. 64.)

II

THERE IS NOTHING IN THE FINDINGS TO BEAR OUT APPELLANT'S CONTENTION THAT IT WAS INDUCED TO SIGN THE SETTLEMENT CONTRACT BY PRESSURE OR COMPULSION

Every argument seriously relied upon by the appellant to show the existence of legal duress is based on facts not embodied in the findings of the Court of Claims—facts, therefore, which are not before this Court on this appeal. *Collier* v. *United States,* 173 U. S. 79.

The appellant argues that it and the entire cotton industry in the South would have been bankrupted had the Government carried out its threat to breach its contract, but there is nothing in the findings of the Court of Claims to support this contention.

Moreover, the appellant here can not predicate duress upon any financial stress or difficulties of other crushers, or of any other persons, but only upon facts proved and found affecting itself alone.

The appellant claims that under this alleged economic pressure the committee representing it and other cottonseed crushers was given but one hour in which to accept the Government's offered settlement. Appellant neglects to point out, however, that these conferences had been under way for a month. (Petition, Par. XXVII, R. 14.)

It further fails to mention that this committee had no power to bind it or any other of the cottonseed crushers; that when the committee reported to its constituents in favor of a settlement, each of those constituents had the option to accept or reject such settlement. The Government in its telegram of December 30 to the crushers (Finding XX, R. 61) stated that the committee's agreement was only tentative. The appellant ignores the fact that its counsel joined with Government officials in signing a statement that the proposed settlement contract, now alleged to have been brought about by duress, was such a one as would have been approved by Mr. Bernard Baruch, Chairman of the War In-

dustries Board, and Mr. George R. James, Chairman of the Linters Section of the War Industries Board, both of whom were out of the city. (Finding XX, R. 63.) Surely appellant's counsel would not have signed such a reference to the proposed settlement contract if it had been forced on his clients by duress.

Particularly it is important to note in Finding XX, R. 61, that the letter sent out by the Ordnance Department to the Du Pont American Industries, Inc., the Government's agent in dealing with these cottonseed crushers, which letter was sent with a printed form of the proposed settlement contract to each of the cottonseed crushers, was prepared not by the Government alone, not only by the officers of the Ordnance Department, but jointly by representatives of the Government and counsel for the appellant and the other crushers. The particular paragraph in that letter relied upon by the appellant to show the pressure that was brought to bear upon it to compel it to sign the settlement contract—paragraph 8—was inserted, as the Court of Claims specifically found (Finding XX), at the request and with the consent of counsel for the crushers, to make certain that all crushers similarly situated would conform to the settlement contract and that none of them would seek and obtain more favorable terms than the rest (Finding XX, R. 61).

The Court of Claims, moreover, did not see fit to find that this appellant or any of the cottonseed

crushers were influenced in the slightest degree by the Government's threat to breach the contract. Here again, a comparison between the appellant's petition and the facts found by the Court of Claims indicate that court's conclusion.

The appellant's maximum claim herein is that the Government threatened to breach a contract in a respect which might have brought about the collapse of the price-fixing plan in the cottonseed industry, known as the "Stabilization Scheme." This stabilization scheme had been constructed by the Food Administration for the purpose of assuring the cotton millers and cottonseed crushers a fixed scale of prices. There is nothing to show that the Government could not lawfully have discontinued it at any time; nothing to show that the industry or this appellant had any vested right in its maintenance.

There is indeed no finding that the Government's breach of contract would have upset the Stabilization Scheme. That is a mere conclusion of the appellant which the Court of Claims refused to find, but even if that would have been the effect of the Government's breaching its contract, it is difficult to see how a threat to breach a contract would have become any the more heinous or more in the nature of duress because it would have resulted in a breaking down of a price-fixing structure originally erected by the Government, which the Government could lawfully have discon-

tinued at any time it chose. There was not even a finding that the destruction of the Stabilization Scheme would have embarrassed the appellant.

Accordingly, the most that we can discover from the findings of the Court of Claims in this case, and from what we are at liberty to infer from its refusals to find, is that the Government threatened to breach a contract which it had with this appellant, and that the appellant, like any other claimant with a disputed claim, thought best to accept less than it was seeking.

III

UNDER THE CIRCUMSTANCES OF THIS CASE A THREAT TO BREACH A CONTRACT CAN NOT BE DURESS AS A MATTER OF LAW

Even if the Court of Claims had found that the appellant executed the settlement contract, which it now seeks to have set aside, only because the Government threatened to breach the original contract and because if such threat had been carried out it would have reduced the appellant to bankruptcy, nevertheless this would not have constituted duress. Much more is it impossible to find duress in law under the circumstances set forth in the findings of the Court of Claims.

Of course, the burden of proving duress is upon the party asserting it. *Mason* v. *United States,* 17 Wall. 67, 74.

There is a case so nearly identical on its facts with the case at bar that the opinion therein ren-

dered in this Court seems almost conclusive. In *Silliman* v. *United States,* 101 U. S. 465, the claimants had leased barges to the United States under a charter party. The United States in the course of performance demanded that the charter price be reduced and threatened, unless the claimants signed a modified charter party, to withhold all payments then due and retain the claimants' barges, all of which the Supreme Court held squarely to have been a breach of the claimants' legal rights under its existing charter party. The claimants signed the modified charter party under protest because they required or supposed they required the money thus withheld to meet their obligations to others, and then sued to have this charter party set aside and to recover the balance of the rental of the barges to which they would have been entitled under the original contract. This Court recognized the hardship of the case, but declared that there had been no legal duress and that the remedy of the claimant lay with the Congress and not the courts.

It has long been established that where a party brings about a compromise of a disputed claim, either by threatening to breach a contract or by withholding moneys due to the other party, this can not constitute duress. Thus in the case of *United States* v. *Child & Co.,* 12 Wall. 232, 244, in which, as in the case at bar, claimant could not get any part

even of what was admittedly due him, except by releasing a part, the Court pointed out that if such a compromise by dispute and negotiation should constitute duress—

> No party can safely pay by way of compromise any sum less than what is claimed of him, for the compromise will be void as obtained by duress. The common and generally praiseworthy procedure by which business men every day sacrifice part of claims which they believe to be just to secure payment of the remainder would always be duress and the compromise void.

In *Mason* v. *United States*, 17 Wall. 67, 74, the Court, in speaking of a claim of duress, said that there was no evidence of it—

> Except that the United States proposed to annul the old contract if the claimant refused to accept the modification, which is wholly insufficient to establish such a charge * * *. Acceptance from the Government of a smaller sum than the one claimed, even in a case where the amount relinquished is large, does not leave the Government open to further claim on the ground of duress, if the acceptance was without intimidation and with a full knowledge of all the circumstances; and the case is not changed because the circumstances attending the transaction were such that the claimant was induced from the want of the money to accept the smaller sum in full, which is not proved in this case.

Compare *Gibbons* v. *United States,* 8 Wall. 269; *St. Louis Hay & Grain Co.* v. *U. S.,* 191 U. S. 159; *Coppage* v. *Kansas,* 236 U. S. 1, 9.

The same doctrine seems also to prevail in the State cases.[1]

The appellant seems to rely on two classes of cases which may be referred to as "additional service" cases and tax cases. Under the former classification fall the *Freund, Hunt,* and *Smith cases* cited by appellant. Under the latter, the *Ward, Swift,* and *Robertson* decisions.

It is believed to be sufficient, in order to distinguish the " additional service " cases from the case at bar, to call the Court's attention to two of such cases not mentioned by the appellant which, when read together, seem to establish the principle on which all these cases rest. If a contractor performs extra services at the request of the Government which he was under no contractual duty to perform, he may recover the fair value of such extra services if he can prove a contract, express or implied, on the part of the Government. This requirement is satisfied if he can show that he protested against performing the extra work without additional compensation and that the Government was apprized of the fact that he expected to be paid for it. The two cases referred to are *United States* v.

[1] The following is a partial list of the State cases: *Hackley* v. *Headley,* 45 Mich. 569 (Op. by Cooley, J.); *Goebel* v. *Linn,* 47 Mich. 489; *Miller* v. *Miller,* 68 Pa. 486; *McCormick* v. *Dalton,* 53 Kan. 146; *Cable* v. *Foley,* 45 Minn. 421; *Wood* v. *Kansas City Home Telephone Company,* 223 Mo. 537; *Eaarle* v. *Berry,* 27 R. I. 221.

Utah, Nevada & Calif. Stage Co., 199 U. S. 414, and *St. Louis S. W. R. R. Co.* v. *United States*, 262 U. S. 70.

The tax cases cited by the appellant seem to the Government to be, if possible, even less applicable than the "additional service" cases. In *Ward* v. *Love County*, 253 U. S. 17, 24, this Court clearly pointed out that a taxpayer has a right of action for taxes illegally collected, because if he did not, there would be a taking of property without due process of law. It is necessary, of course, that the payment should not have been purely voluntary. (See *United States* v. *Edmonston*, 181 U. S. 500.) Where a statute provides for protest at the time of payment, that protest is sufficient as a basis for recovery. Where a statute does not so provide, protest is evidence of the involuntary nature of the payment. In either event in the tax cases, as in the "additional service" cases, the recovery is not based on the theory of duress. Duress and hardship, if present, only help to show that additional payment was expected for the additional services, or, in the tax cases, that the payment could not have been voluntary.

A taxpayer may recover back any payment unless he made it willingly, without protest or objection; a contractor dealing with the Government or a private party can always recover on a *quantum meruit* for services performed outside of the terms of his contract, where the other party knows he is

not performing the services as a gratuity. The fact that the tax cases do not rest upon the theory of duress is further indicated by the expressions of the Court in *United States* v. *Holland-American Lijn*, 254 U. S. 148; that theory implies an action in tort of which the Court of Claims could not have jurisdiction.

There is no distinction because one of the parties was the United States Government. The *Silliman*, the *Mason* and *Child cases*, as well as many others, regard the Government as in no different case from an individual under these circumstances. Indeed, when the contractor is thrown back upon his remedy in the courts by the Government's threat to breach a contract, he is in one respect more fortunate than if he were dealing with an individual or corporation. He has a debtor of whose solvency he is assured.

IV

THERE WAS ABUNDANT CONSIDERATION TO SUPPORT THE MODIFYING OR SETTLEMENT CONTRACT

The modifying or settlement contract is found on page 51 of the Record, while the original contract is found on page 43. A comparison of these two contracts shows that the appellant's claim that there was no consideration for the settlement agreement is not true. In the first place, the price to be paid for the linters supplied was different

under the two contracts. Moreover, the appellant was relieved of its obligations under the original contract to deliver a specified quantity of linters, its estimated maximum production for the season 1918–19. Further, by the new contract it got the privilege of selling as many as it chose on the open market, the United States guaranteeing, however, to take such as should be left upon its hands on July 31, 1919, up to a maximum of appellant's proportion of the 150,000 bales allotted to all the different seed crushers. (R. 53.) Accordingly, on the assumption that the war had not "terminated" and that the Government had no right to cancel the contract under the termination clause, it is apparent that sufficient consideration was mutually furnished by the parties to support the new contract.

On the other hand, if the Government had the right to terminate, and if that is what it actually did, as specifically held in the court's opinion and indicated by the cancellation notice which was sent on December 30 in accordance with the original contract, then the modifying contract was an agreement by the Government to accept a much greater quantity of linters than it could possibly have been expected or required to accept under the thirty-day provision of the termination clause. The appellant could not possibly have manufactured in thirty days anything like the number of linters which it

manufactured up to July 31, 1919, and which the Government accepted almost in their entirety. If, then, the Government had the right to cancel, this additional element of consideration appears.

Moreover, the Government seems to have given up its contention in a perfectly reasonable dispute as to whether or not the war had " terminated " within the meaning of this contract, and whether or not, therefore, it had the right to act under the termination clause of the original contract. The right of the Government to terminate or cancel was to come into effect " in the event of the termination of the present war." It was surely not unreasonable for the Government to contend that in a contract for the procurement of material needed solely for the prosecution of the war—needed only during the continuance of hostilities—the thought of the contracting parties must have been that the Government should have the right to terminate when the need for such material had ceased. It was the termination of hostilities, not the signing one or two or three years later of a formal treaty of peace, which was to release the Government from the obligation to accept from contractors enormous quantities of war supplies which then would have become useless. The question was not whether a state of war existed under the rules of international law, but what the parties to this contract for munitions meant by termination of the war.

V

THE SETTLEMENT CONTRACT WAS A GOOD ACCORD AND SATISFACTION. MOREOVER, THE APPELLANT ACQUIESCED IN IT AND ACCEPTED ITS BENEFITS

In the first place, upon good consideration the appellant entered into a settlement contract which contained a general release to the Government of all the appellant's claims. (Finding XX, R. 62.) It is elementary that such a compromise is binding (see *United States* v. *Wm. Cramp & Sons Co.*, 206 U. S. 118; *Savage Arms Corporation* v. *United States*, 266 U. S. 217; *St. Louis, B. & M. Ry. Co.* v. *United States*, 268 U. S. 169, and cases cited), and that it makes no difference that it was entered into under protest. A voluntary acceptance by a claimant of a smaller sum than he believes to be due, or than is actually due him, is made none the less binding by protest, if offered in full satisfaction of his claim. Every party is unwilling to give up what he believes due him, and usually objects in some form. *Savage, Executrix*, v. *United States*, 92 U. S. 382.

Furthermore, it is to be noted that this appellant made no protest and no attempt to repudiate the settlement agreement of December 31 (Finding XXI, R. 63) until on June 29, the last day before the expiration of the period within which claim could be filed under the Dent Act, the appellant filed a claim (Finding XXI, R. 63). Also it is to be noted that even after filing its claim it accepted

the final payment under the terms of the settlement contract. (Finding XXII, R. 63.) Certainly there is nothing in the entire record from which it can be inferred that when appellant accepted that final payment there was any pressure upon it to do so, or that it did it other than voluntarily. As the Court of Claims pointed out, appellant is trying to repudiate now a contract under which it had willingly received all benefits.

VI

NEITHER THE APPELLANT'S PLEADINGS NOR THE FINDINGS SHOW ANY FACTS BY WHICH DAMAGES COULD BE ASCERTAINED

The Government feels justified in calling the Court's attention to another matter, which must be treated under alternative assumptions.

First, if it be assumed that the war was not terminated, that the cancellation clause of the original contract of September 26, 1918, had not taken effect, and that the Government had no right to cancel, then it would seem that the appellant's only claim for recovery of damages must be the difference between the contract price which, under the contract of September 26, 1918, the Government had agreed to pay for linters produced by the appellant and the fair market value of those linters at the time of the breach.

The appellant in seeking to set aside the modified or settlement contract is suing to recover the

full contract price of the linters which the Government, in carrying out the provisions of that modified contract, refused to take. (Finding XXII, R. 63. Petition, Par. 32, 33, R. 18, 19, 20.) This can only be upon the theory, it would seem, that title to those linters had passed.

But the Record is bare of anything upon which it could be found that title to these linters, which had not been accepted by the Government, had nevertheless passed to it. And there is neither allegation nor finding as to the market value of the linters at any time between December 30, 1918, and July 31, 1919, except only the allegation at paragraph 13 of the Petition at page 7 of the Record, to the effect that on May 1, 1919, the market value was higher than $0.068, which was higher than the original contract price of $0.0467. (R. 43.) There is no showing of market value at the time of breach nor of any resale loss.

On the other hand, if it be assumed that the war had terminated within the meaning of the termination clause of the contract of September 26, 1918, and that the Government, therefore, had a right to cancel and call that termination clause into operation, then the most the appellant could claim would be that it was entitled to the difference between the contract price and market value of such linters as it could have manufactured in thirty days, and to reimbursement for the commitments mentioned in the termination clause.

Once more, there is no allegation or finding of the market value of linters during the 30-day period mentioned in the cancellation clause, nor of the quantity of linters, if any, produced during that period; and none as to the amount of appellant's commitments, if any, for which it would have been entitled to reimbursement under the termination clause.

CONCLUSION

The Government accordingly respectfully submits (1) that there is nothing to show that the appellant was forced to sign the modified or settlement contract by any pressure or compulsion exerted by the Government; (2) that no pressure or compulsion which the appellant claims or can claim was exerted by the Government under the circumstances of this case amounts to duress invalidating the settlement contract; (3) that the settlement contract was based upon abundant consideration; (4) that the settlement contract and the appellant's conduct after its execution are sufficient to bind the appellant to its terms and to preclude the appellant from being heard to request that it be set aside; and, finally, (5) that the appellant has made no case upon which, even if its request to set aside the settlement contract were granted, it could recover any damages against the Government.

Accordingly, the Government respectfully submits that the judgment of the Court of Claims should be affirmed with costs.

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PAUL SHIPMAN ANDREWS,
ARTHUR M. LOEB,
HAROLD HORVITZ,
Special Assistants to the Attorney General.

FEBRUARY, 1926.

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SUPREME COURT OF THE UNITED STATES.

No. 609.—October Term, 1925.

Hartsville Oil Mill, Appellant, *vs.* The United States.	Appeal from the Court of Claims.

[April 12, 1926.]

Mr. Justice Stone delivered the opinion of the Court.

On February 5, 1923, a bill (S. 4479) was introduced in the Senate authorizing and directing the Secretary of the Treasury to pay to two hundred and eighty-five named persons, firms and corporations, including the appellant, "which entered into contracts with the United States of America through the agency of the United States Ordnance Department, which contracts were cancelled by said Ordnance Department, the several sums set opposite their names". By Senate Resolution of March 3, 1922, the bill, with accompanying documents, was referred to the Court of Claims for consideration and report. Jud. Code, § 151. Appellant filed its petition in the Court of Claims, referring to the Senate bill and resolution and setting up a claim upon a contract of September 26, 1918 for the sale of cotton linters to the Government. The Court of Claims held, upon the facts found, that it had jurisdiction to render a judgment under the provisions of chapter 7 of the Judicial Code; that the plaintiff was not entitled to recover upon its claim, and entered judgment dismissing the petition.

The case comes here on appeal. Jud. Code, § 242, before its repeal by the Act of February 13, 1925.

The petition sets out a cause of action for failure of the Government to perform its contract of September 26, 1918, and by way of anticipation of a defense, alleges that a later contract of December 31, 1918, between appellant and the Government, purporting to cancel the earlier contract, was procured by duress

and was without consideration. The jurisdiction to hear and determine the claim is conferred by Jud. Code § 145, and was not enlarged or otherwise affected by the Senate resolution.

The petitioner, a South Carolina corporation, was engaged in the business of crushing cotton seed for the production of cotton seed oil, cotton seed meal and other cotton seed products, including cotton linters, which are the short fibres adhering to cotton seed after the removal of the staple cotton by ginning. During the late war, cotton linters were used extensively in the manufacture of explosives. After the entry of the United States into the war, appellant, with all others engaged in the production of cotton seed products, became subject to the direction and control of the War Industries Board (Act of May 20, 1918, c. 78, 40 Stat. 556), and of the United States Food Administration (Act of August 10, 1917, c. 53, 40 Stat. 276), with respect to the production and distribution of their product and the prices of both the raw material purchased and the product sold by them. This control was an essential feature of a plan to stabilize price and stimulate production.

Appellant, by its contract, which was similar in form and content to those of the other manufacturers named in the Senate resolution, agreed to sell to the Government its estimated product of cotton linters for the year ending July 31, 1918, approximately 2,250,000 pounds, at 4.67 cents per pound. The contract contained a clause authorizing the Government to cancel it "in the event of the termination of the present war" with the proviso that the seller should continue to make deliveries for thirty days after the effective date of cancellation and that the Government should save the seller harmless from actual loss resulting from the cancellation.

In November, 1918, after the armistice, negotiations were begun between the Cotton Products Section of the War Industries Board and a Committee representing appellant and other manufacturers, for the adjustment and settlement of all obligations upon appellant's contract of September 26th and all similar contracts. In the course of these negotiations, it was contended by the representatives of the Government and denied by the Committee that the termination of the war had occurred, within the meaning of the cancellation clause. The War Industries

Board ceased to function on December 21, 1918, and these negotiations were continued on behalf of the Government by representatives of the Ordnance Department. On December 30, 1918, officers of this department notified the Committee that the Government would settle its obligations upon these contracts only by accepting the linters then on hand and inspected, about 270,000 bales, and would take only a part of the linters produced between January 1 and July 31, 1919, not to exceed 150,000 bales, the amount taken to be pro-rated among the manufacturers. At the same time they notified the Committee that unless this proposal was accepted within one hour from the time it was made the Government would refuse to perform its contracts and would refuse to accept or pay for any linters either on hand with the manufacturers or afterwards produced by them, and that appellant and other manufacturers could seek their remedy in the courts.

Within the hour the Committee, although protesting against the Government's interpretation of the contract and the position taken by its representatives, notified them that the manufacturers would accede to the proposed modification of their contracts. On the same day the Ordnance Department gave to appellant and other manufacturers telegraphic notice of the cancellation of their contracts, and on January 2, 1919, a form of contract, embodying the verbal agreement reached between the officers of the Ordnance Department and the Committee, was submitted to the appellant and the other manufacturers, accompanied by a copy of a letter of the Ordnance Department stating that linters would not be accepted by the Government from any producer who refused to execute the contract. Appellant's counsel assisted in the preparation of this letter. The form contract, dated December 31, 1919, was signed by appellant; it contained recitals of the cancellation of the earlier contract of September 1918; that a dispute had arisen as to whether the war had terminated and as to the measure of damages provided by the cancellation clause in the earlier contract, and stipulated that the new contract was in lieu of cancellation of the earlier contract and a modification of it.

The findings of the Court of Claims establish appellant's right to recover under the earlier contract if it was not modified by the

later one. Appellant urges that the later contract does not bar such recovery because the coercive measures resorted to by officers of the Ordnance Department, to induce its execution, amount in law to duress, rendering the second contract invalid and without force to modify the first. To support this position appellant relies on the serious consequences which the industry would have suffered if the Government had wholly refused to perform its contracts. It asserts that 270,000 bales of linters already inspected by the Government were in the hands of manufacturers; that a million tons of cotton seed, purchased at the uniform price of $70 fixed by the Government, were on hand; that the manufacturers had made commitments for the purchase of 480,000 tons in the hands of farmers. It is contended that the Government's refusal to carry out the contracts would have resulted in the failure of the scheme for the stabilization of the price of cotton seed and its products, and in the collapse of the business structure which had been reared upon the basis of the stabilized price, and that great loss would have resulted to appellant and other manufacturers.

A difficulty encountered by the appellant at the outset is that this view is not supported by the findings made. On its own theory of the case, appellant must prove the probable injury which it would have suffered from the threatened refusal of the Government to carry out its contract, and that fear of that loss was the effective cause of its executing the settlement contract. Any inference that the business of manufacturing and distributing cotton seed products would have been disastrously affected, would avail appellant nothing because it does not appear what the consequences to its own business and finances would have been.

The findings establish that on December 30, 1918, there were in the hands of manufacturers 270,000 bales of linters; but it does not appear what proportion of them, if any, were in the hands of appellant. There is no finding with respect to the amount of cotton seed or cotton seed products in the hands of the manufacturers. There is no finding with respect to the nature or extent of the commitments of the manufacturers for the purchase of seed, or as to the nature or extent of the loss which appellant would have suffered if on December 30, 1918, the Government had refused to go forward with its contract; or that the legal damages for such breach of contract would not have been adequate to com-

pensate for its loss. There is no finding that appellant was induced to sign the settlement contract by fear of the consequences of a refusal to sign.

In applying to the facts of this case the principles which control duress as a legal ground for avoidance of a contract, we are limited to such conclusions of law as may be drawn from the fact found by the court below, that the appellant signed the settlement contract after negotiations in the course of which the threat was made that the Government would disregard the admitted obligations of its contracts unless those entitled to the performance of them would yield to its demands. This threat was discreditable to the officers who made it and injurious to the Government, whose high obligation to deal justly and according to law, with those with whom it contracts, might well have been their first concern. But a threat to break a contract does not in itself constitute duress. Before the coercive effect of the threatened action can be inferred, there must be evidence of some probable consequences of it to person or property for which the remedy afforded by the courts is inadequate. *Silliman* v. *United States*, 101 U. S. 465; *Rosenfeld* v. *Boston Mut. Life Ins. Co.*, 222 Mass. 284; *Hackley* v. *Headley*, 45 Mich. 569; *Goebel* v. *Linn*, 47 Mich. 489; *Cable* v. *Foley*, 45 Minn. 421; *Wood* v. *Telephone Co.*, 223 Mo. 537; *Secor* v. *Clark*, 117 N. Y. 350; *Doyle* v. *Rector, etc., Trinity Church*, 133 N. Y. 372; *Smithwick* v. *Whitley*, 152 N. C. 369; *Earle* v. *Berry*, 27 R. I. 221; and see *Mason* v. *United States*, 17 Wall. 67; *United States* v. *Child*, 12 Wall. 232.

Freund v. *United States*, 260 U. S. 60; *Hunt* v. *United States*, 257 U. S. 125; *United States* v. *Smith*, 256 U. S. 11, relied upon by appellant, present different considerations from those involved here. All were cases in which Government contractors were called on to perform extra services, the representatives of the Government taking the position that the services demanded were stipulated for by the contracts. In each it was held that the services were not contemplated by the contract, and that the contractor did not assent to the Government's construction. There was consequently no legal bar to the contractor's recovering the fair value of the service rendered to the Government, the Postmaster General having authority to request the services and to pay for them. See also *United States* v. *Stage Co.*, 199 U. S. 414; *St. Louis, S. W. Ry.* v.

United States, 262 U. S. 70, 76. Here the appellant is confronted with the finding that it has executed a formal contract which bars its recovery unless it sustains the burden of proving duress.

The objection that the contract by which the parties settled the controversy between them was without consideration is without weight. *Savage Arms Corp.* v. *United States*, 266 U. S. 217.

Affirmed.

Mr. Justice SUTHERLAND took no part in the case.

A true copy.

Test:

Clerk, Supreme Court, U. S.